

STATE OF CALIFORNIA
THE RECLAMATION BOARD
REGULAR BOARD MEETING

YUBA COUNTY GOVERNMENT CENTER
915 EIGHTH STREET
SUITE 109A - BOARD OF SUPERVISORS' CHAMBERS
MARYSVILLE, CALIFORNIA

Friday, October 19, 2007

10:06 A.M.

KATHRYN S. SWANK, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 13061

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. Benjamin Carter, President

Mr. Butch Hodgkins, Vice President

Ms. Lady Bug Doherty, Secretary

Ms. Rose Marie Burroughs, Member

Ms. Teri Rie, Member

Mr. John Brown, Member

Ms. Emma Suarez, Member

STAFF

Mr. Jay Punia, General Manager

Mr. Stephen Bradley, Chief Engineer

Mr. Dan Fua, Supervising Engineer

Mr. Scott Morgan, Legal Counsel

Ms. Lorraine Pendlebury, Staff Assistant

ALSO PRESENT

Mr. John Bassett, SAFCA

Mr. Paul Brunner, TRLIA

Mr. Joe Countryman, MBK Engineers

Mr. Tom Eres, Hofman Ranch

Mr. Tom Foley, Concerned Citizens for Responsible Growth

Mr. Jeff Fong, Department of Water Resources

ALSO PRESENT

Mr. Jim Giottonnini, City of Stockton

Ms. Olivia Guebara, Department of Water Resources

Mr. Christoper Huitt, Department of Water Resources

Mr. Chris Neudeck, RD 2126, Atlas Tract

Mr. Ric Reinhardt, TRLIA, Reclamation District 2103

Mr. Thomas Rice, Rice River Ranch

Mr. Jim Sander, U.S. Army Corps of Engineers

Mr. Don Schrader, Yuba County

Mr. Scott Shapiro, TRLIA, Reclamation District 2126

Mr. Raj Sharma, self

Mr. Keith Swanson, Department of Water Resources

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1 PROCEEDINGS

2 PRESIDENT CARTER: Good morning, ladies and
3 gentlemen. If I could call the meeting to order. This is
4 the State Reclamation Board for October 19th meeting.

5 I want to first of all welcome you all here to the
6 Reclamation Board meeting. I would also like to note for
7 the record that the Reclamation Board met yesterday as
8 well. We went on a tour. The tour followed the agenda as
9 published and members of the public are welcome to follow
10 up with any of the Board members or staff if they have any
11 questions regarding the tour.

12 We also did have a closed session as agendized,
13 yesterday afternoon, regarding the litigation as noticed.
14 And then we continued our tour this morning, touring
15 portions of the Tisdale Weir and the Sutter Bypass on our
16 way over here to this meeting today.

17 So if I could ask General Manager Punia to please
18 call the roll.

19 GENERAL MANAGER PUNIA: Jay Punia, general manager
20 for the Reclamation Board.

21 And I am glad to report that we have a full Board
22 present at this meeting, including our two new members,
23 Mr. John Brown and Emma Suarez.

24 PRESIDENT CARTER: Thank you, Mr. Punia.

25 And yes, I would also like to welcome the two new

1 board members. I'll give you the opportunity, if you
2 would, to say any words or introduce yourselves to the
3 public. If you would like to, you could pass on that.

4 John, would you like to say anything?

5 MEMBER BROWN: Thank you, Mr. Chairman. It's a
6 pleasure to be on this Board and to serve this agency. My
7 name is John Brown from the Sacramento area. I am a
8 registered civil engineer and registered agricultural
9 engineer. And I feel very privileged to be part of this
10 group.

11 Thank you, Mr. Chairman.

12 PRESIDENT CARTER: Thank you.

13 Emma, did you want to say anything?

14 MEMBER SUAREZ: Just say good morning and I'm
15 happy to be back.

16 Thank you.

17 PRESIDENT CARTER: Thank you. Okay.

18 We'll move on to Item 2 on the agenda, approval of
19 the minutes for August 17th, 2007.

20 SECRETARY DOHERTY: I'm sorry. They are not
21 ready, sir.

22 PRESIDENT CARTER: And/or September 11th, 2007?

23 SECRETARY DOHERTY: No, not ready, sir.

24 PRESIDENT CARTER: So neither of those are ready?

25 SECRETARY DOHERTY: Neither of those are ready.

1 PRESIDENT CARTER: So we will table Item 2 for our
2 next meeting.

3 Next item is approval of the agenda for today.

4 Are there any suggested changes to the agenda for
5 today?

6 Mr. Punia?

7 GENERAL MANAGER PUNIA: Yes. President Ben Carter
8 and Board Members, there are a few changes to the proposed
9 agenda. Number -- Item No. 7, it was under consent.
10 Levee Maintenance Easements for Kimball Hill Homes. I
11 think there are some changes, and the Rec Board counsel
12 has advised us to put this item under action rather than
13 consent.

14 And No. 8, Modification of Lease Agreement with
15 ASTA in the City of Rio Vista. After evaluating the
16 lease, we felt that staff has concluded that there's no
17 action needed from the Board at this time, so we are
18 requesting to remove this item from the agenda.

19 Item No. 9, Board Order 07-01, Amendment of Pipe
20 Authorized by Permit No. 263, Maintenance Area 9,
21 Sacramento County. Instead of Mark Herold, Chris Huitt
22 will present this item.

23 Item No. 10, Applications, 10.A., Three Rivers
24 Levee Improvement Authority, Application 18227, Yuba
25 County. In addition to Steve Bradley, I, general manager

1 for the Reclamation Board, would like to address the
2 Board, and Keith Swanson would like to address the Board
3 on behalf of the Department of Water Resources.

4 Those are the changes proposed to the agenda from
5 the staff.

6 PRESIDENT CARTER: Are there any other suggested
7 changes to the agenda for today?

8 SECRETARY DOHERTY: I make a motion that we
9 approve the agenda as altered.

10 PRESIDENT CARTER: Okay. We have a motion to
11 approve the agenda with the changes, moving Item 7 to
12 action --

13 MEMBER RIE: Second.

14 PRESIDENT CARTER: Okay. We have a second.

15 We'll be removing Item 8 and then changes to the
16 presenters for Item 9, Chris Hewitt. And 10.A., Jay Punia
17 and Keith Swanson in addition to Steve Bradley.

18 Motion and second.

19 Any discussion?

20 All those in favor, indicate by saying "aye."

21 (Ayes.)

22 PRESIDENT CARTER: And opposed?

23 MEMBER BURROUGHS: Aye.

24 PRESIDENT CARTER: The motion carries. Okay.

25 At this time, Item 4, we have agendized public

1 comment. This is the time when we invite any member of
2 the public to address the Board on unagendized items for
3 today. We ask that members of the public please fill out
4 a card and give them to Lorraine so that she can pass them
5 up so that we know to -- that you do want to speak.

6 Please fill those cards out.

7 You're welcome to speak now under this item,
8 No. 4, on unagendized items before the Board. We ask you
9 to limit your comments to five minutes, please. You're
10 also welcome to address the Board on agendized items.
11 Those comments will be welcome when we discuss that
12 particular item as part of the agenda today.

13 So with that, we have Mr. Don Schrader, you wanted
14 to address us during public comment?

15 MR. SHRADER: First of all, I would like to
16 welcome everybody to the Yuba County Board of Supervisors
17 Chambers. I sit on the Yuba County Board.

18 I have a concern. I talked to Mr. Carter about
19 this. We have an issue in 2103 and 87 -- 1001, south
20 of -- in the south part of the County in the Wheatland
21 area.

22 The Union Pacific Railroad is basically filling up
23 one of their tressels, approximately a third of the way
24 across the Bear River floodplain. Our concern -- and they
25 have stopped construction for the time being. How long

1 that's going to last, I don't know. But the County's
2 concern, and 2103 and 1001's concern is, what effect
3 that's going to have on the hydraulic flow in the river
4 channel. In '86 and '97, the water went from bank to bank
5 currently where the work's being done.

6 In some of the conversations we've had, I got
7 ahold of Congressman Herger's aide. She's made numerous
8 calls to Washington, D.C., and the work has stopped. It's
9 not that we were opposed to the work. Our concern is,
10 what effect is that work going to have on the flow of the
11 water in the river.

12 Right now, they filled up -- a lot of the trestles
13 have been filled with loose dirt, which is -- if the water
14 comes up, the dirt's going to wash down the river.

15 I spoke to Mr. Carter about this, and I've spoken
16 to Mr. Bradley. It's something that I would like to see
17 the Rec Board look into. The Railroad's kind of taken the
18 attitude that they don't come under state law, which is
19 somewhat bizarre. We have to abide by the law. Everybody
20 should abide by the same regulations. So I hope it's
21 something that the Board can look into and find out what
22 the effect of that project's going to be on the flow of
23 water on the Bear River.

24 Any questions?

25 PRESIDENT CARTER: Are there any questions for

1 Supervisor Schrader?

2 Yes, Mr. Punia.

3 GENERAL MANAGER PUNIA: I just want to let the
4 Board know that we, the staff is prepared to brief the
5 Board on this subject, as part of the General Manager's
6 report. Dan Fua and Steve Bradley are working with Union
7 Pacific Railroad, but if the Board desires they want a
8 briefing right away, we can accommodate that.

9 Thank you.

10 PRESIDENT CARTER: Why don't we hold that for the
11 general manager's report.

12 I have no other indication that anybody else from
13 the public wants to address the Board on unagendized
14 items, so we will move on to Item No. 5, Report of the
15 Activities of the Department of Water Resources.

16 Mr. Swanson, good morning.

17 MR. SWANSON: Good morning. Keith Swanson. I'm
18 acting chief of the Division of Flood Management with the
19 Department of Water Resources. Welcome, everybody this
20 morning, specifically Emma, back, and John. Welcome.

21 I wanted to start out and just make a few comments
22 on our overall FloodSAFE program, and the FloodSAFE
23 program is our bond implementation work and our
24 traditional flood management work. And I think in the
25 tour, we saw some of the activities that the Department is

1 moving forward with -- and we went by Tisdale Bypass
2 today. We've also been working on critical erosion
3 repairs, levee evaluations in the urban areas. We saw
4 some and had some discussion about early implementation
5 projects, certainly work that TRLIA is hoping to
6 accomplish. And the work over in Sutter County, in LD1,
7 and those projects are moving forward.

8 We're also working on guidelines for our local
9 levee repair program, our corridor program. And so, you
10 know, I think we're making, making a lot of progress and,
11 you know, we've done this, having just received bond
12 money.

13 We're now starting to focus on our overall program
14 development. And what I mean by this is, what we're going
15 to do with people, process, and tools, to steer our bond
16 funded program into the future. And what we're trying to
17 do is to make sure that at the end of ten years, when the
18 bond money is gone, we can say that we've done something
19 significant and that we just don't look at one another and
20 kind of say, "Gee, where did the money go? We're no
21 better off than where we are now."

22 And so we're working on trying to lay that
23 groundwork. We started some discussions with the
24 executive staff, with the Board, because we see the Board
25 as a major player and a major partner in this process. We

1 will continue to do that as we start getting it down on
2 paper what our plan is.

3 We'll be likely in front of the Board, either
4 November or December time frame, for a more formal
5 presentation of where we're going. Just at this point, I
6 want to say that we are working on this overall plan. We
7 do see significant roles for the Board. We see
8 significant roles for our other partners, like Corps of
9 Engineers, the Central Valley Flood Control Association,
10 the resource agencies, the local flood control agencies.
11 And so we're working toward that and you will be seeing
12 more in the future.

13 Yesterday's weather -- I think, as we stood out in
14 the levees, reminded us that flood season is coming. I
15 want to ensure you that we are starting to make
16 preparations for this coming flood year. The Department
17 is conducting its coordination meetings throughout the
18 state. These are our meetings with federal, state, and
19 local agencies, where we coordinate our activities to make
20 sure that we understand roles and responsibilities as we
21 move into the flood season. So those are occurring this
22 month.

23 The Department has also been conducting a lot of
24 training on our field methods. We call them our sandbag
25 courses. Those have been going on. I think we've had

1 three courses at the beginning of the month. We've also
2 been training a lot of department staff in the NIMS
3 process.

4 As far as our maintenance activities work on our
5 levees, the Department maintains either as maintenance
6 areas or in accordance with Water Code Section 8361. That
7 work is winding down. We're still in the channels,
8 working, trying to get as much done, and we'll continue
9 on, probably into December, weather permitting, to -- with
10 our vegetation management in the channels.

11 Our fall levee inspections are starting now, and
12 we're working with local maintenance agencies to make sure
13 they are ready. And we're going to be, you know,
14 evaluating the level of maintenance that is completed.

15 We're working on a -- some emergency operation
16 steps. We're taking some steps in the delta. We're
17 currently going out to bid for some contracts to develop
18 some conveyor facilities in three locations in the delta,
19 and we will be also acquiring some rock to stock pile.
20 And this is just anticipatory, having the material on hand
21 in case of a major delta emergency. This is the first
22 step of a more comprehensive delta emergency operation
23 plan that we will be developing over the course of the
24 next year, year and a half.

25 Regarding just kind of the overall flood season

1 preparation, we will be in front of the Board in December
2 for a more in depth presentation. We'll have
3 representatives from our maintenance group and from our
4 operational group, and so you can expect a much more
5 detailed briefing in December time frame, December
6 meeting.

7 As far as the weather outlook, you know, I think
8 we've heard some stories that there's going to be a weak
9 to moderate La Niña year. And what does that mean? The
10 recent Natural Weather Service predictions are that for
11 northern California and parts of central California, we
12 might have above average precipitation, and for the
13 remainder of central California and southern California,
14 average to below average.

15 I have invited one of our meteorologists, Elissa
16 Lynn, to our November Board hearing. And she'll give you
17 the cook's tour on that one. As part of the briefing next
18 time, I will have her give you a more in depth briefing
19 from somebody that really knows the business. So Alisa
20 will be here in front of you.

21 It's my understanding, the last meeting you asked
22 for -- you know, start getting a briefing on the Delta
23 Risk Management Study, or the DRMS study. I provided a
24 short update in your package and provided a reference to
25 the DRMS Web site. I wasn't going to go into great detail

1 on that. And if you want a full briefing, I can bring --
2 we can work with Jay and get the full briefing with the
3 folks that are working directly on the DRMS study. The
4 one thing that I did want to mention is that there has
5 been a bit of controversy on the Phase 1 report that was
6 released in August. And there -- the Department set up an
7 independent technical advisory board. And it was
8 something the Department funded, and they wanted to get
9 some peer review from some high quality folks, you know,
10 very knowledgeable folks. And there was some criticism on
11 the report. And the bottom line was that the report did
12 not do a good job of referencing the documents that were
13 cited. It didn't do a good job of laying out what the
14 documents were and where in the documents the information
15 was that was relied upon in the report.

16 And so the Department is working with its
17 consultant, URS, and those comments will be addressed, and
18 the report is being revised. And I think that there's a
19 March 2008 time frame for the revised report.

20 The Urban Levee Evaluation Program has started up
21 again. Because of the delays in the budget, we had some
22 funding issues and we shut down drilling in a lot of
23 locations. We have -- you know, there's an impact from
24 that. The overall program is likely to suffer a two- to
25 six-month delay because of the starting and stopping of

1 the drilling. We did just complete the field work
2 associated with the electromagnetic surveys of the levee.
3 And from what I am hearing from our technical folks, this
4 is a tool based on -- they tow a sensor behind a
5 helicopter and they shoot electronic, you know, waves down
6 into the ground. And based on conductivity, they are able
7 to look for anomalies in the soil.

8 It's really the first time that I've heard -- and
9 I'm a geotechnical engineer -- of an effective geophysical
10 method of evaluating levees. And the folks that I have
11 talked to are very excited about this and feel like it's
12 going to give us a much better understanding of our
13 levees -- that in conjunction with the drilling program.

14 We're currently processing the data. And so in
15 the next, you know, I don't know, probably another month,
16 beginning of next month, we'll have the processed data and
17 they will start putting that together with their drill
18 logs and start getting a better idea of what our urban
19 levees look like.

20 We started the bathymetric surveys, or that's
21 about ready to be started in the urban areas. And we've
22 developed preliminary geotechnical reports in RD17, West
23 Sacramento and Marysville. And that is information you
24 should review now.

25 There has been some concern that Lady Bug brought

1 it up, about planting in the Sutter Bypass. We did some
2 investigation on our permit, the Rec Board Permit 17843,
3 and that was for some earth work in the bypass.

4 According to staff, that was successfully -- the
5 work was successfully completed. We sent some inspectors
6 out. We're not seeing what Lady Bug is concerned with.
7 So I've had some discussions, and she's going to go out
8 with us, and we're going to get to the bottom of what she
9 saw. She saw some tree planting out there which if it was
10 associated with this permit would be a violation. And so
11 we want to understand where the problem is and we'll take
12 the appropriate steps.

13 If you recall, in the Knights Landing area, we had
14 a small levee that was an orphaned levee that nobody has
15 been maintaining since the project was turned over to us.
16 It came to Board attention when Castle Properties started
17 developing the area right adjacent to the levee. There
18 was discussion that maybe the Department should step in
19 and form a maintenance area. Nobody was very keen on
20 that, and we've been working with the Knights Landing Rich
21 Drainage District, Castle Properties, the Department, and
22 the Corps of Engineers. And we've been making substantial
23 progress on that. And there's been a lot of work on
24 bringing the levee section up to standard.

25 And I think we're getting to the point where

1 pretty soon we're going to be in a position to sign a
2 formal operation and maintenance agreement with the
3 Knights Landing Rich Drainage District. So I think it's a
4 story of success. We did not come in and form a
5 maintenance area. We have the local maintaining agency
6 stepping up, taking over the work. We've increased the
7 condition. We've improved the condition of the existing
8 levee. And Knights Landing has been able -- or is working
9 toward a funding agreement with the developer so that
10 their costs can be compensated. So good success story.

11 We were out at the Tisdale Bypass Sediment Removal
12 Project this morning. Being an ex-construction hand, I
13 was really enjoying the sound of the dozers and watching
14 the scrapers run around. The site looks good. I think
15 it's another story of success.

16 As we said before, appreciate the help that Ben
17 and Lady Bug, specifically, gave us, and then
18 Assemblymember La Malfa who helped us with some
19 acquisition issues, some property acquisition issues, that
20 we were able to acquire property. And then we had that,
21 we were able to get our permits. And now we're out to
22 construction. And we will be finished with the earthwork
23 by the end of the -- by November 1st. We should have the
24 planting done by November 15th. So good story.

25 I handed out a couple of sheets of information on

1 the recent flood management legislation. The bills are
2 going to result in some significant changes to the Rec
3 Board, and they require some various work products to be
4 produced by the Department and we have some time frames on
5 those. I'm not going to go into great detail. I know you
6 have Scott working on maybe some -- a briefing of what the
7 legislation might mean. Our legal staff is currently
8 preparing a white paper. It's certainly something that
9 the Rec Board and the Department are going to need to be
10 working on very closely in the coming weeks and months to
11 make sure that we do not have or we minimize any
12 disruption to our existing process.

13 I think Jay, if you wanted to coordinate something
14 with David Sandino for the Board, it would be appropriate.
15 It is something we need to put some energy on and make
16 sure that we minimize construction.

17 Our erosion repair work is continuing on. The
18 2005 Ayers erosion sites, we're really down to the end.
19 There's four sites that have pole cuttings yet to be
20 installed. We delayed that work because of weather, and
21 that's going to happen in the next couple of weeks and
22 we're done with that, other than long-term monitoring
23 requirements that we have.

24 The 2006 Ayers critical erosion repairs also are
25 winding down except for two sites on Cache Creek. There's

1 two sites that we've gone through and come up with designs
2 for setback levees. The work is on hold, pending real
3 estate acquisition, discussion ongoing between Department
4 staff and the local land holders. Certainly, the work
5 cannot occur until property acquisition occurs.

6 There's Phase 2 planting on 22 sites. That's
7 going to be completed by November.

8 2006 PL 84-99 Rehabilitation Assistance Program
9 also moving forward.

10 DWR will complete repairs on Butte Creek Unit One
11 Levee Mile .8 by November 1st. That's the last of the
12 Butte Creek sites.

13 There were six Order 2 sites that the Corps picked
14 up just recently. The Corps couldn't get to them this
15 year, so that work will be accomplished next year. And
16 then there were a lot of smaller repairs in rural areas.
17 There were, like, 62 sites that the Corps is working on.
18 They are saying they are only going to get to seven of
19 them because of environmental compliance issues. The
20 remainder of those will be rolled over next year and then
21 we'll be taking those up.

22 We have a number of special levee repair projects
23 that were -- we've been working on. The Hamilton City
24 levee interim repair is moving forward. There was a field
25 action report produced that concluded that this site could

1 fail with -- during a high water event. Because of that,
2 DWR is working with Glenn County and Hamilton City on cost
3 share funding through the Local Levee Erosion Repair Grant
4 Program.

5 Fremont Weir, just upstream of Fremont Weir, we
6 had a gauge station that is being threatened by erosion.
7 It looks like the Sac Yard will be able to get out and do
8 some interim work at that site and relocate the gauge and
9 do a little bit of, you know, some interim repair work to
10 protect it so that we have a functioning gauge through the
11 flood season.

12 And then staff has also been talking with Butte
13 County about general parameters, about what a feasibility
14 study would need to consist of, and possibly funding
15 sources for the 3Bs overflow area. Trying to provide
16 some -- just some technical guidance on how they might
17 move forward with that.

18 And then finally, we were out at the M&T Ranch
19 yesterday.

20 We looked at the site on the Phelan Levee that
21 causes -- you know, is a real challenge for the
22 Department. We talked about this yesterday. But, you
23 know, that's an area where when the flood control project
24 was originally designed and constructed, there was not a
25 good local consensus on what should be done up in that

1 area that's above where the existing levees stop. The
2 folks in the north end of the Butte Basin were more in
3 favor of formalized flood control. And the folks down at
4 the bottom end of the basin were less interested in
5 funding a formal project and really maybe didn't have the
6 funding to help defray the costs. And as a consequence,
7 the federal project was not ended up that high. There
8 were private levees that were constructed, and certainly,
9 the Phelan Levee is one of those private levees. Parrot
10 Levee was another. There's a couple more.

11 In the early 1960s, the Corps told the Rec Board
12 that those levees were unauthorized and that they needed
13 to be removed or the state risked the potential loss of
14 flood control preparations coming into the state of
15 California.

16 And so the state then developed a Master Plan of
17 Flood Control in the Butte Basin, and that was in 1964.
18 And it resulted in some of those levees being degraded, at
19 least in the locations. It also laid out potential
20 actions that could be taken, including channelizing the
21 flood flows in the Butte Basin. But it indicated that
22 that was likely something that was going to have to be
23 funded at the local level.

24 Nothing really happened, you know, as far as some
25 of the plans that were laid out in this 1964 report.

1 And in the 1980s, the Department and, I think, the
2 locals and Corps of Engineers had a meeting of the mind
3 that something needed to be done up in the Butte Basin
4 area. And there was -- you know, there was general
5 concern that the river might migrate into the Butte Basin
6 and that that might affect the function of the state and
7 federal flood control project, the design of the state
8 federal flood control project. The premise of that was
9 that no more than 150,000 cubic feet per second would
10 enter into the levee portion of the project along the
11 Sacramento River. All other water would be shunt over to
12 the Butte Basin.

13 There was also concern that lack of action could
14 lead to changes in the course of the river, cutting some
15 of the ox bows, or the big bends, out; and that if the
16 river were to change course, that would affect the flow
17 splits leaving the overflow, at the overflow weirs. That
18 includes the M&T flood relieve structure, the Goose Lake
19 flood relieve structure, and the 3Bs flood relief
20 structure.

21 And so as a consequence, the Reclamation Board
22 started becoming concerned. There was an EIR produced
23 that laid out certain courses of action. There was a
24 discussion with the Corps of Engineers about them taking
25 on additional role for erosion control repair in this

1 section of the river. There was legislation passed that
2 extended the Sac Bank Authority further up so that this
3 area could be covered. And there was also some emergency
4 repair, erosion repair work, done under PL 84-99 authority
5 just upstream of the flood relief structure.

6 Part of the -- in the EIR, work was proposed for
7 the M&T structure, for the Goose Structure, but no work
8 was proposed at the 3Bs structure. There was also some
9 erosion repair work that was proposed, but it was never
10 done.

11 To fund state activity associated with the
12 operation and maintenance of the weirs, a maintenance area
13 was formed. And that was Maintenance Area 15. That
14 maintenance area stopped just right at the upstream end of
15 the flood relief structure. That maintenance area lasted
16 for a couple of years, and then it was dissolved, and a
17 provision was put into the Water Code that said that the
18 state would operate and maintain the overflow structures,
19 the weirs in this area.

20 Curiously, it put it in a section of the Water
21 Code that you said -- that pertained to features of the
22 Sacramento River Flood Control Project. That's a little
23 bit of housekeeping there, because these features are not
24 Sacramento -- official Sacramento River Flood Control
25 Projects. But nonetheless, the Department has taken on

1 the historical role, since the '80s, of maintaining the
2 M&T flood relief structure itself and the Goose Lake flood
3 relief structure. And the Department, or the Rec Board
4 even went further, and they acquired the property that
5 just, you know, associated with the M&T flood relief
6 structure and the area downstream. And we, like I said,
7 have been maintaining that.

8 The Corps of engineers really never -- well, let's
9 see.

10 In 1997, after repeated failures of County Road
11 29, the Corps of Engineers commissioned the Ayers
12 Consulting Firm to conduct a hydraulic analysis of this
13 area. And they were looking at the potential for the
14 river to meander over to the Butte Basin and trying to
15 deal with this issue of flow splits and whether we needed
16 to keep the river flowing in its current -- within its
17 current path and if changes would have an impact on the
18 levee portion of the project.

19 The report concluded, and it was surprising to a
20 lot of people, that the river was not likely to reroute
21 into the Butte Basin and that some of the -- you know, the
22 meandering were cut off, that it wasn't likely to affect
23 the amount of water entering into the levee section of the
24 project. It concluded that if you got more water flowing
25 into Butte Basin at one overflow structure, you would get

1 less water flowing in at the other overflow areas.

2 That was extremely -- well, nobody expected that.

3 And I think because it was so contrary to what people had
4 concluded, there was opposition to finalizing the report.

5 And when we talked with the Corps, they thought the report
6 had never been final, though we did find a copy of it that
7 says "final" on it, and people looked at it.

8 Now, this report, that I know of, has never been
9 papers reviewed. Certainly, it has controversy associated
10 with it when it was produced. There were, it's my
11 understanding, comments generated, associated with it that
12 were never addressed. But, you know, at this point, it's
13 the only document that we have regarding flow splits in
14 the area and how that area operates.

15 Just yesterday, we mailed out a field action
16 report associated with our critical erosion repair program
17 that went and looked at this site, and it's the process
18 that we typically have used to determine whether or not we
19 should be conducting erosion repairs on a given site
20 relative to the long laundry list of sites that people
21 have submitted and asked for repair work on.

22 The report concludes that the site is not
23 currently critical because of the amount of berm that is
24 still left. It also concludes that the river is unlikely
25 to change courses and migrate over into the Butte Basin.

1 It's a similar conclusion to what was in the Ayers report.
2 It is a controversial conclusion. There's a number of
3 people that would still argue that that is and should be a
4 concern of the Rec Board and Department.

5 It also pointed out that the boundary -- I think
6 the report does, that the boundary of Maintenance Area 15
7 ended up at the flood relief structure.

8 The Phelan Levee is a private levee. And we've
9 got a lot of controversy about who has the responsibility.
10 Locals would certainly like the state to step up and fix
11 it. You know, the state at this point doesn't think it's
12 critical and says that, you know, basically saying it
13 doesn't qualify for the current programs. That's not to
14 say we don't need to do something. And we do need to move
15 forward. And so I give some suggestions on what we need
16 to do. And that is, certainly, the locals need to closely
17 monitor the site. And what we've typically done is we've
18 put two-by-sixes into the ground so that we can see if
19 there's erosion, when the water comes up if there's
20 erosion. It gives us some warning that erosion is coming,
21 potentially, you know, to undermine the levee, if that
22 occurs. So we would -- we would encourage the locals to
23 monitor.

24 Also, we've been in contact with the Corps of
25 Engineers, and we think the local, state, and the feds

1 should go out and look at the site and attempt -- you
2 know, we want to get the Corps to be ready to conduct an
3 emergency response under the PL 84-99 authority. So we
4 would encourage the locals to work with us and work with
5 the Corps to try to get organized as best we can in the
6 event that this qualifies for PL 84-99 emergency response.

7 We also work with the locals as we develop our
8 local levees grants program. We'll keep the locals
9 informed about the program. I do have to caution
10 everybody that there are guidelines associated with this
11 program. It is a competitive program, and so this work
12 would need to be some of the -- you know, it would need to
13 compete against other people submitting applications for
14 the money.

15 Also, as the guidelines are currently written, it
16 requires a public agency to submit the grant so the local
17 levee maintaining agency, M&T Ranch, would need to be
18 working on something like Butte County to qualify.

19 I think the Rec Board should do what it can to
20 hold the Corps of Engineers accountable. This was in the
21 area that historically Sac Bank has taken responsibility
22 for, and so I think Rec Board should be working with the
23 Corps to make sure that they are not just walking away
24 from this and trying to point to this Ayers report and
25 say, "There is no federal interest."

1 On record, they have responsibilities up in this
2 area, through Sac Bank. And so I think we should be
3 pushing that angle.

4 The other thing is, as we move forward with our
5 FloodSAFE program, we need to do the necessary work to
6 understand what the state role is and what the state
7 interest is, up in the Butte Basin. This is an area that
8 has not been well-documented. There are, you know,
9 agreements in place. There are verbal agreements. There
10 are some written agreements. We need to try to fill up a
11 consensus of what should be done up there. We need to
12 figure out the roles and responsibilities of the various
13 groups up in the area and figure out what the funding is
14 and then document what we decide.

15 It's been a major exercise trying to figure out
16 what's going on up there and, you know, we're dealing with
17 50 years' worth of documents, agreements, sometimes lack
18 of agreements. And clearly, we need to do something
19 different.

20 And so I think as we move forward with the
21 FloodSAFE, there is an area where we need to make sure
22 it's given attention and we don't lose track of the
23 importance of the area and we come up with some
24 conclusions and we document them.

25 At that point, I am open for questions.

1 PRESIDENT CARTER: Are there any questions for
2 Mr. Swanson?

3 SECRETARY DOHERTY: I have a question for
4 Mr. Swanson.

5 Are you the one that inspects the -- your division
6 inspects the levees and says, "Well, you are in violation
7 here, here, here, and here," and then they have this
8 checklist that they go by?

9 MR. SWANSON: The Department inspects levees. We
10 have an obligation under the assurance that -- we provided
11 assurances to the federal government that we would
12 inspect -- actually, the Rec Board provided assurances to
13 the Corps of Engineers that the program would be operated
14 and maintained according to Corps standards.

15 In those agreements, it requires four annual
16 inspections and a report to the Corps of Engineers, on an
17 annual basis. We conduct those inspections and provide
18 that information to the Corps, and then the Corps has a
19 quality assurance obligation. They go out and check up on
20 the inspection work that the Department does.

21 SECRETARY DOHERTY: The point I was trying to make
22 was, if a levee district had been notified that they were
23 in violation on, let's say, ten of the items that -- well,
24 rodent holes and trees and so forth and so on. And
25 recently, because of the consternation caused by the

1 vegetation discussions, it was decided that people would
2 not be in violation and would be able to get the PL 84-99
3 funds if something happened right now, because they don't
4 know whether to clean the vegetation or not to clean the
5 vegetation.

6 Did letters go out to all the districts stating
7 that? Who notified them of this?

8 MR. SWANSON: There have been some formal
9 communications that have gone out -- what you are talking
10 about -- you know, the Corps of Engineers issued a white
11 paper, and this white paper said that all vegetation on
12 the levees will be removed or you will potentially lose PL
13 84-99 rehabilitation eligibility, and that your levees
14 will potentially be declared inadequate for FEMA purposes.

15 What they asked for was something that was
16 inconsistent with our past maintenance practices. It was
17 also inconsistent with how the project was constructed and
18 turned over to the state of California. And so there were
19 a number of agencies -- the Department, the Rec Board, the
20 Central Valley Flood Control Association, and all the
21 resource agencies -- that wrote letters to the Corps of
22 Engineers and said, "Wait a minute, slow up on this.
23 Let's talk about the process and let's do what's
24 necessary, but let's understand that there's public safety
25 issues here and there's public trust issues here,

1 environmental stewardship issues here."

2 And so there was a levee symposium that tried to
3 gather all the experts around the country in one location
4 and say what, you know, the science said about --

5 SECRETARY DOHERTY: Yeah. Mr. Swanson, I was
6 there at those conferences.

7 But what I am getting at is -- I will just take
8 Levee District 3. So they got this letter that you are
9 not eligible anymore. So man, they took their \$50,000 and
10 they went out and everybody's complaining because they are
11 clearcutting their levee.

12 And I said, "Well, didn't you get any of the
13 information?"

14 And they said nobody had ever notified them that
15 they were still going to be eligible at this time for --
16 so that's why I'm --

17 MR. SWANSON: There has been some information sent
18 out to levee districts --

19 SECRETARY DOHERTY: By what Department? Because
20 they hadn't gotten any information.

21 MR. SWANSON: The Department did. The Department
22 inspectors -- Jay, do you have any --

23 GENERAL MANAGER PUNIA: I think as part of their
24 fall inspections, inspectors are going to inform the
25 district and they're -- I'm not certain. There was a plan

1 that the Department will send a letter on the result of
2 this roundtable decision so that we can inform the rec
3 districts. But I haven't seen the letter.

4 But definitely, the inspectors are aware of this,
5 and they need the local reclamation district -- they will
6 be sharing this information with the district.

7 SECRETARY DOHERTY: So something is now going to
8 go out?

9 GENERAL MANAGER PUNIA: That's correct.

10 MR. SWANSON: If a letter hasn't gone out, I will
11 follow up and make sure we send a full letter out. And we
12 are meeting with the districts and we are explaining the
13 policy.

14 SECRETARY DOHERTY: Right. Good. Thank you.

15 PRESIDENT CARTER: Mr. Fua?

16 SUPERVISING ENGINEER FUA: Going back to -- I
17 think I understand what Lady Bug is asking. And we did
18 send a letter to the districts about the deficiencies that
19 they have. And they were asked to submit a corrective
20 action plan.

21 And my recollection is that LD3 did not submit
22 that corrective action plan, and that's why the Corps
23 said, you will be -- you will no longer be eligible for PL
24 84-99, for not applying that order.

25 And we did call each district after the deadline

1 that we set, which was around April 30th, I believe, Jay.

2 GENERAL MANAGER PUNIA: That's correct.

3 SUPERVISING ENGINEER FUA: We called each district
4 and told them that they had until the end of June to
5 comply. I believe LD3 was one of those districts that
6 didn't comply. There are about, I think, six of them.

7 SECRETARY DOHERTY: You gave us a list.

8 SUPERVISING ENGINEER FUA: Yes.

9 SECRETARY DOHERTY: But I knew that things had
10 changed since that time.

11 SUPERVISING ENGINEER FUA: Well, yeah.

12 PRESIDENT CARTER: I think what we're --

13 SUPERVISING ENGINEER FUA: Depending on what the
14 violation was, if it was levee vegetation, then levee
15 vegetation that -- the districts that are deficient in a
16 levee vegetation problem should not be told that -- would
17 still be eligible under PL 84-99.

18 PRESIDENT CARTER: Some of these districts have
19 got multiple issues, vegetation being one of them. I
20 think what the problem we have right now, what we're faced
21 with now is that we kind of dropped the ball -- the Rec
22 Board, DWR, our inspectors dropped the ball or we are not
23 acting on a timely basis. Because some of these levee
24 districts are still under the impression that they have to
25 attempt to comply on the vegetation standard and have not

1 been informed that we have -- we have agreement amongst
2 the -- from the Corps, that they are going to monitor the
3 levee vegetation issue but not necessarily make somebody
4 ineligible for PL 84-99 because of vegetation.

5 The other 79 criteria that are on the inspection
6 still hold and they are accountable for, and the deadline
7 is still March 30 for them.

8 However, the vegetation is -- we've gotten a --
9 some additional time for them to -- until appropriate
10 standards are agreed upon amongst the regulating
11 stakeholders -- the Corps, DWR, the Reclamation Board, and
12 the resource agencies, Fish and Wildlife, Fish and Game,
13 NOAA Fisheries, and FEMA will also be brought into the
14 process, and hasn't been part of the process to date, but
15 will be part of the process.

16 So what we need to have happen -- I don't know if
17 it's appropriate for the Rec Board staff, probably so; we
18 need to send out a letter saying that the Corps has agreed
19 to give us some more time in terms of the vegetation
20 element of the levee -- of the levee standards and
21 inspection standards.

22 So you need to do all of your other -- fix all of
23 your other problems. But on vegetation, wait, please.

24 MR. SWANSON: And I will follow up. I think the
25 letter was drafted and sent out, laying out our

1 expectations on vegetation standards. Now, I could be
2 wrong. I will get back to you on that.

3 PRESIDENT CARTER: I would like to find out.

4 Okay. Any other questions for Mr. Swanson?

5 MEMBER BURROUGHS: Yes. I have a couple. Thank
6 you.

7 In your report, you mention that -- about the
8 Ayers report, that there was some question about whether
9 it was finalized or not finalized. And you mentioned that
10 there was not a peer review ever done.

11 Is there plans to have a peer review, to review
12 that now, at this time?

13 MR. SWANSON: You know, I don't know that we have
14 formal plans to do a peer review at this point in time.
15 And a peer review in a document that's ten years old might
16 be very difficult.

17 Now, might we need to redo that analysis, build on
18 that analysis, to get an understanding of what's going on
19 up there, I think the answer would be yes, so I think we
20 need to move forward and answer the question, whether to
21 peer review that report. I guess we need to do some
22 follow-up to find out if the hydraulic modeling still
23 exists so that you could do any kind of, you know,
24 additional study that might be required, or sensitivity
25 analysis, that type of thing.

1 MEMBER BURROUGHS: One statement that had been
2 made in the report was whether or not the river could
3 change direction.

4 In your opinion, is the river changing direction?

5 MR. SWANSON: The river is moving around. I
6 think, if I'm interpreting your question, an extended --
7 if the question is, is the river likely to move over into
8 Butte Basin, the Department's consensus is no, it's not.

9 If the -- if you are asking whether the river is
10 likely to meander around within the historical meander
11 belt, certainly. And, you know, is it likely that it
12 could punch through in some of these locations where you
13 have a big loop and the river? Certainly.

14 PRESIDENT CARTER: Are there any other questions
15 for Mr. Swanson?

16 MEMBER BURROUGHS: Just one comment. My comment
17 would be that in visiting the tour and looking at the maps
18 and looking at the changes and looking at the potential
19 possibility of pushing through, wouldn't it seem that it
20 would be more cost effective to work on preventive
21 measures than waiting till something blows and then having
22 to do a full-scale repair?

23 MR. SWANSON: Well, if you look at, you know,
24 holistically, would it be better for someone to do
25 something now as opposed to waiting for the levee to be

1 damaged? Certainly. Certainly.

2 The question is, what is that trigger, though,
3 when you do it? Could -- you know, might the river stop
4 moving that way and move further downstream? That's a
5 possibility. And then maybe you don't even -- you never
6 need to do anything on that bank that's eroded.

7 So you know, there's a lot of questions to answer.
8 And certainly, the responsibility for doing that work, who
9 funds it, that's one of the questions that we need to work
10 on.

11 MEMBER BURROUGHS: And one last question on the
12 Tisdale Weir. You mentioned that there will be planting
13 next month. Can you tell me what kind of plants --

14 MR. SWANSON: Grass. Native grasses. I don't
15 know the exact seed mixture. Staff is working on it.

16 I mean, if you want to know the exact grasses, we
17 can get you the mix. If you want assurances that we're
18 not putting brush and trees back in, I can give you that
19 right now.

20 MEMBER BURROUGHS: I don't need assurances. But
21 if it's possible, later, at a later time, if you could
22 give me the kind of plants or kind of seed that's going to
23 be used.

24 Thank you.

25 MR. SWANSON: Thank you.

1 PRESIDENT CARTER: Any other questions for
2 Mr. Swanson?

3 Mr. Hodgkins?

4 VICE PRESIDENT HODGKINS: This is really a
5 question for the Board.

6 I think one of the things that I learned here is
7 that the issue of the state and federal role in preventive
8 movement of the river in this location is one where, from
9 a technical standpoint, it would appear that the Corps has
10 concluded, there is no federal interest.

11 But the state never made that conclusion. And so
12 what we have here is a situation where the partners aren't
13 agreed on who's responsible. And I would like to suggest
14 and perhaps volunteer to help draft a letter to the Corps,
15 setting forth our understanding of where we are and asking
16 the Corps to either acknowledge the fact that the
17 '86 document is still in effect, which says it is a
18 combined state and federal interest, and for this kind of
19 meanderer, or come and explain to the Rec Board why the
20 Corps has no role, since there's never been a formal
21 decision. And in effect, use that to start up -- to come
22 to some resolution on this. This is not going to help
23 Mr. Heringer because you are not going to get this
24 anywhere fast enough to get him any assistance in doing
25 some work.

1 But, you know, I think a good solution is --
2 somebody said on the floor that what happened is it was
3 unresolved and there was every good intention to resolve
4 it, and people got busy doing other things, so it never
5 got resolved. And I think we should try and resolve it.

6 PRESIDENT CARTER: I think that's a reasonable
7 suggestion.

8 Are there any objections? Does the Board want to
9 proceed down that path?

10 Okay. So Butch, you will work with staff?

11 VICE PRESIDENT HODGKINS: Yes.

12 PRESIDENT CARTER: Are there any other Board
13 members that would like to work with them perhaps?

14 SECRETARY DOHERTY: He's sufficient by himself.

15 PRESIDENT CARTER: Okay. Very good. That's what
16 we'll do.

17 All right. Mr. Swanson, thank you very much.

18 MR. SWANSON: Thank you.

19 PRESIDENT CARTER: John, did you have a question?

20 MEMBER BROWN: That's all right.

21 PRESIDENT CARTER: All right. We'll move on to
22 Item No. 6, Three Rivers levee Improvement Authority
23 Monthly Report.

24 Mr. Brunner, good morning.

25 MR. BRUNNER: I'm Paul Brunner, the Three Rivers

1 Executive Director.

2 I too would like to welcome you to Yuba County and
3 the board chambers room. And yesterday, we had a good
4 day, I think, on the tour of the levees. And for the
5 members that didn't have an opportunity to come to the
6 tour, I would extend the offer to you, a personal tour, to
7 go through and show you the levees. I think we have a
8 very exciting project to be able to show you.

9 You should reference, for this monthly report --
10 for the new members, what I do, do is, we do submit the
11 monthly report upfront, and then I go through them,
12 highlighting the points of significance that's changed.
13 So I don't try to hit every point of change and to make it
14 as brief as possible and to be open for questions.

15 Before I start that, though, I do want to
16 acknowledge a couple of things here. The -- during
17 yesterday's tour, you had an opportunity to see several of
18 our levees, particularly the Bear setback and the Feather.
19 The setback levee on the Bear is a certified levee along
20 with the Feather -- or not the Feather yet; I anticipate
21 very soon it will be. But the Western Pacific Interceptor
22 Canal, and also the work that we did on the Yuba River.
23 Portions of it were certified.

24 Our group within Three Rivers did put together a
25 plaque that we've put together for the Rec Board. We

1 would like to say thank you very much for your support.
2 It's an artist's rendition of what you saw yesterday on
3 the setback for the Bear. And what it says here is,
4 "Presented to the California State Reclamation Board,
5 2007. We thank you for all your efforts and continued
6 support. Three Rivers Improvement Authority, a joint
7 power authority, formed by the County of Yuba and RD 784."

8 We really do thank you very much for your support
9 and continued support for what we do.

10 Thank you.

11 PRESIDENT CARTER: Thank you very much.

12 MR. BRUNNER: We have prepared those for when we
13 got the certification. Not everyone gets certification,
14 timely, on our levees. And we thought that that was a
15 very significant event for us all, for our 11 miles of
16 certified levees. And I wanted to do that.

17 PRESIDENT CARTER: Thank you. On behalf of the
18 Reclamation Board and the state, I thank you very much for
19 the recognition. It's not always that we get positive
20 recognition, and we welcome it when it does arrive.

21 So thank you very much.

22 MR. BRUNNER: Well, thank you.

23 Going to the report, that hopefully you had an
24 opportunity to pull out, there's one other item I wanted
25 to quickly reference before I get to the report.

1 Last month, you were in these chambers too, and we
2 had the 11 September Subcommittee Meeting. Many of you
3 were here. We had a whole series, towards the end of the
4 meeting, of questions that came, not only for TRLIA but
5 for other organizations that were out that meeting.

6 We did wait for the transcript to come out so we
7 could capture all the various questions that came for
8 TRLIA. We did capture those yesterday afternoon when the
9 tour finalized. I was able then to make final edits to
10 our responses, so I did turn in the responses to Lorraine
11 for what, we believe, were the questions that were to
12 Three Rivers. So when you have an opportunity to review
13 those, if there's questions, please let us know and we'll
14 get back to you. So we did fulfill that obligation,
15 responding to those comments.

16 PRESIDENT CARTER: Thank you.

17 MR. BRUNNER: Turning to the report now, the --
18 what I'm going to do is highlight a couple of items,
19 actually a few more than a couple, that have to do with
20 updates. Again, I don't try to cover every item. But on
21 the levee report, on the report on Item 1.a.3 -- actually,
22 let me go 1.a.2 first. On 1.a.2, when we talk about the
23 power pole, we did talk about it, in the report, that the
24 power pole would be completed and removed. That was done.
25 We did observe a power pole coming out of that seepage

1 berm. This is the power pole that was on the Cal Trans
2 seepage berm, that location. There was a long discussion
3 that we had. And there was a special request that Three
4 Rivers be there to observe it. We did that. And that
5 work was completed.

6 On items -- on page 2, I would like to note on
7 1.c.1., which is dealing with the piezometers on the Yuba
8 River, that work was completed as was being discussed here
9 in this paragraph. We had forecasted the work was redone
10 and that work was completed.

11 On 1.d.2.a, which is the Segments 1 and 3, the --
12 on this one, we did put the construction on Segment 3 to
13 bid and under construction. We awarded a portion of the
14 work. We talked briefly about that yesterday, on the
15 tour, for Segment 3. You didn't see that, but I
16 referenced that right towards the end. We do anticipate
17 being wrapped up with our levee work and off the levee
18 this month.

19 We did experience, on the slurry wall portion of
20 the work, about a hundred-foot section of the slurry wall,
21 where we ended up having a problem right towards the end
22 at the bottom of the trench apparently collapsing. And
23 we've been working with the Corps and the State DWR and
24 also identified to the State Rec Board that there was this
25 issue.

1 We have proposed a stability berm to be placed to
2 secure that for the flood season. And we know that we
3 need to come back and fix that, next construction season.
4 We believe that we'll be able to put it in a safe
5 condition. And we did apply for the encroachment
6 permit modification.

7 SECRETARY DOHERTY: What was the length of the
8 collapse?

9 MR. BRUNNER: The actual station which we are
10 identifying is 130 feet. And the stability berm extends
11 out approximately 25 feet from the toe of the slope of the
12 levee that we have there.

13 PRESIDENT CARTER: The trench -- how wide, how
14 deep was the collapse?

15 MR. BRUNNER: Well, the trench is -- as they are
16 doing the slurry wall, is about a 4-foot wide trench that
17 the big back excavator is going down. The trench itself
18 is about 60, 70 feet deep. So the bottom 10 feet, they
19 ended up having problems where it collapsed in, and they
20 started to identify that issue during the excavation work.
21 So we paused and then we knew that we had to go back and
22 do something. And most likely, we'll end up having to
23 either put a slurry wall right next to it to replace it.

24 We won't go in and actually yank it out, but some
25 way of identifying and fixing it. For the short term, the

1 slurry wall leveled out area which collapsed is in place.
2 But we know we have a problem, at depth, that we need to
3 fix.

4 MEMBER BURROUGHS: Excuse me. Can I ask a
5 question.

6 Do you know what the cause of the collapse was?

7 MR. BRUNNER: We do not yet, no. And that's
8 something that actually we're working through with the
9 contractor issue is, is it a design issue, is it a soils
10 issue, is it a contractor issue? And right now, we don't
11 know. We just know that we need to fix it to get it in a
12 condition for the flood season, because it's coming, and
13 put it in place and then work those contractual issues out
14 and come up with a right solution, a right permit
15 solution.

16 Any more questions on that particular item before
17 I move on?

18 PRESIDENT CARTER: Please proceed.

19 MR. BRUNNER: Turning to page 3 under Segment 2,
20 this is 1.d.3.e, the -- we did on Segment 2 go out for
21 bid. I described that during the tour yesterday. We did
22 receive bids back. They were very competitive bids. We
23 do anticipate next Tuesday, in this room, going through
24 and having that discussion and awarding Schedule A for the
25 bid and then dealing with that later on as far as other

1 awards on the other schedules, for the rest of the work,
2 sometime in the February/March time period next year.

3 You will hear more about that, most likely, at the
4 1 o'clock session meeting on the discussion on the
5 application for the 408 permit, and how that ties
6 together. And we talked briefly about that on the tour.
7 But we did get the bids back in, and we are planning to
8 take some action. At least, I am proposing to our TRLIA
9 Board to take some action next week.

10 On 3.f. and g on that page, quite a bit has
11 happened since we wrote this report several weeks ago.
12 And when we were writing this report, we had identified
13 that we had hoped today would be the encroachment permit
14 being issued by your Board and to the -- so those two
15 segments or sections will be -- are actually not correct
16 today. And that's a subject for the 1 o'clock meeting,
17 where the 408 permit hopefully will be delegated. That
18 discussion will go on and it will be up to the Board to
19 make that decision.

20 We do believe that the delegation is very
21 important to take place so that we can meet our design and
22 go on with our construction efforts and we'll speak more
23 to that later on.

24 On page 4, I would like to give an update on the
25 funding. On this, there was a lot of discussion in prior

1 Rec Board meetings and local share and what we're doing.

2 I am very, very honored or proud to say that the
3 County, our various partners in that did get together,
4 worked hard. We did put together our financial plan. I
5 hold this up because it's a lot of effort that went into
6 this. It speaks to what we're doing for the State Prop 1E
7 funding. That speaks to Segments 3 and 2 on the Feather
8 River that you saw yesterday, Segment 1, we're funding
9 local funds to do.

10 We were required to come up with a -- around a
11 \$53 million local share. And we've had some issues,
12 difficulties, with the economic situation with the
13 developers. That's not a surprise. They are there,
14 working with us, full board, to make this happen. But
15 there are economic items that are there.

16 We recognize that. I think everyone -- our
17 partners, our stakeholders, our development community, the
18 County, RD 784, Three Rivers -- really understand the
19 commitment that we have to the Rec Board and also to our
20 public about the flood safety issues that we have in the
21 south Yuba area, and that we must complete this project.
22 And so everyone pitched in and put together an economical
23 plan. The local share was covered by two ways. It covers
24 the development community. We did put \$30 million into a
25 capital call structure, like we've had before. And the

1 Yuba County did step forward to provide a \$23 million, in
2 that range, funding, to provide the local share.

3 There are ways of working through here, of
4 underwriting and paying those debts off, particularly the
5 County, into the future. So we minimize that.

6 But we would -- were able to put together a very
7 viable good financial plan, which the state now has and
8 they are reviewing. And hopefully by some time in the
9 next week or so, we'll get those responses back. We'll
10 get buy-in. We'll get into the agreement, and we'll start
11 the actual work again on the construction on the project.
12 I think that's very positive news for our program.

13 And with that, that's really the end of the
14 report. And I would be open to questions.

15 PRESIDENT CARTER: Mr. Brunner, during the
16 subcommittee meeting held last month, there was discussion
17 about an audit of the financials of Three Rivers.

18 Was that complete?

19 MR. BRUNNER: The audits are complete. The audits
20 needed to be in here as part of this financial plan.

21 The audits for the last three operating years are
22 complete. They are out on my Web page. If you go to the
23 Three Rivers Web page, you can pull them up and look at
24 the audits for public records and information. When we
25 started off on the application of doing the audits, the

1 last operating year was the one that just got over in June
2 and July. That's under contract to be done now.

3 But when we started to do this, I just put the
4 last three operating years, which were the last three at
5 that time. It's on my Web page now. But the one for the
6 '06/'07 period will get done very soon.

7 PRESIDENT CARTER: And what did the audit say?

8 MR. BRUNNER: The audit found no deficiency. The
9 operating procedures were sound and good.

10 PRESIDENT CARTER: It was an unqualified --

11 MR. BRUNNER: It was an unqualified okay.

12 PRESIDENT CARTER: And you passed out, this
13 morning, the questions asked at the public meeting of the
14 subcommittee. There were specific questions from
15 Ms. Hofman. Have these been given to the folks who asked
16 the questions as well?

17 MR. BRUNNER: They have not yet. I brought extra
18 copies I can give out today. I finished them yesterday
19 afternoon and brought them in this morning, after the
20 copying for the meeting, and I would be glad to hand them
21 out.

22 PRESIDENT CARTER: Okay.

23 Very good.

24 MEMBER RIE: Question.

25 PRESIDENT CARTER: Ms. Rie?

1 MEMBER RIE: Do you anticipate the costs for
2 Segments 1 and 3 will go up because of the delay in
3 starting work to 2008?

4 MR. BRUNNER: On Segment 3, we -- what we're
5 experiencing is an immobilization charge. So in our
6 discussions with our -- I'm going to focus on that one
7 first, because that's under construction already. There
8 will most likely be some cost increase for remobilization,
9 but when we went to award the contract with the
10 contractor, we had those discussions about costs. And
11 we'll try to minimize that. There will be some price
12 increase.

13 Segment 1, we went -- and we have not awarded that
14 contract yet. We do have authority -- my TRLIA Board
15 delegated me the authority to award it once we have
16 funding. So I have a contract in place with good prices.
17 And we negotiated a time with the contractor until the
18 first week in December to make that award.

19 So when the Prop 1E, if this works through, and we
20 get all the agreements done in November, like is
21 anticipated, I should have the local share funding in
22 place to be able to make that award and that would lock
23 those prices and it should cover that mobilization for
24 Segment 1.

25 MEMBER RIE: So the bid prices are going to expire

1 December 1st?

2 MR. BRUNNER: Unless they extend again with the
3 contractor. We extended one already. They would expire
4 around December 2011, I believe, about the first week or
5 so in December.

6 MEMBER RIE: Can I ask DWR if it's feasible to
7 come up with a funding agreement for the proposition money
8 by the end of November?

9 MR. SWANSON: The Department -- I'm not here to
10 commit to a specific date on when things are going to
11 happen. We're working with the applicants, trying to get
12 through the process. And so -- I don't know the specific
13 time frame.

14 I don't know. Do you have a better sense from the
15 Department, talking with George Qualley and Rod, on the
16 timing of that? Have you guys been working closely
17 together on this? And like I say, there's on overall
18 commitment on moving this forward. There's a lot of
19 complexities though.

20 MR. BRUNNER: What has -- the -- DWR is doing an
21 extensive review, and as far as committing to a time,
22 date, they haven't.

23 But they -- the indications are, when we turn in a
24 report, the plan that we have here, there would be two or
25 three weeks of review. Indications are that they would be

1 getting back comments to us on this and hopefully in the
2 next time period on it. And then we would sit through and
3 work through the agreement.

4 DWR is committed to a template coming forward. We
5 haven't seen that yet. Discussions with DWR staff is
6 that, that should be coming soon. The current plan that
7 we laid out in here identifies us to be able to have the
8 agreement in place around the middle to late November time
9 period.

10 If DWR was responsive to us in the next time
11 period that I just talked to, then I think that the plan
12 that we have here would then go forward.

13 It's hard for them to go through without the right
14 DWR here to represent and to respond.

15 MEMBER RIE: Okay.

16 PRESIDENT CARTER: Any other questions for
17 Mr. Brunner?

18 MEMBER BURROUGHS: Go ahead, Steve. And then I
19 have a question.

20 PRESIDENT CARTER: Mr. Bradley?

21 CHIEF ENGINEER BRADLEY: Yeah. The Board may be
22 interested, but the DWR funding that's being provided from
23 the bond is a not-to-exceed. They are not going to
24 provide any more money than the 138 and a half million
25 dollars to Three Rivers for this project.

1 Three Rivers had to raise \$53 million in order to
2 qualify for that money as their local share. But any
3 overruns are also the responsibility of Three Rivers.
4 It's my understanding, in a way, that that contract is
5 going to work. So if this project goes over, I think the
6 Board ought to be concerned as to where the additional
7 money will come from. Otherwise, we are going to end up
8 with a partially constructed project.

9 So it is a key question. And I've been asking DWR
10 this of what's going to happen. I have not gotten any
11 answers.

12 MEMBER RIE: Thank you for stating that. That is
13 a good point. And our Board needs to be on top of this,
14 to make sure that these agreements don't get pushed out
15 till early 2008, because we want to keep those prices
16 under control. Right now, they have bid prices. And with
17 the construction industry being up in the air and prices
18 going up, those costs could easily escalate if the
19 agreements are delayed to 2008.

20 MR. BRUNNER: Can I respond to that?

21 PRESIDENT CARTER: Yes.

22 MR. BRUNNER: Well, part of our plan that we have
23 here raised that point, and that was one of the questions
24 DWR asked as to cost overruns. We're aware that cost
25 overruns are part of our duty. That was part of the

1 agreement that it came with. Also, cost savings will come
2 to us if we have cost savings, not that the state -- the
3 state amount is fixed for the 138. Consequently, to give
4 you an example, we just went through the Segment 3 work.
5 It came about a million dollars under our estimate that we
6 awarded, that we had forecasted in here with all our due
7 diligence. Contractors are looking for work, that million
8 dollars that we had at that time may get eaten up by the
9 Segment 3 work, the problem that we have with the trench.
10 But that savings isn't where the state pulls back their
11 money -- is if I can do -- TRLIA, Three Rivers, can do a
12 very economical job and get it done, and that's what we're
13 trying to work through. That's only one element of a
14 phased approach. Then we get to keep these savings and
15 apply it to our project on it and hopefully reduce our
16 local share, not the state funding for it. Because if the
17 burden is on us to have cost overruns, those savings need
18 to be then also shared by us.

19 Segment 2 award that we're going to go through
20 came in significantly underestimated or underbid from what
21 our engineered estimate was. That, again, allows us some
22 room to maneuver to have savings in this project that we
23 work through. And we'll work very diligently with our
24 contractors to do that. So that's one element that we
25 had.

1 That's an important fact that all of a sudden the
2 state doesn't start pulling back none from us. They are
3 fixed. We can do a good job and we are going to do that.

4 We're also working through a benefit assessment
5 area that's not approved by my board yet, but for cost
6 funding to come in to help supplement that, to pay off
7 funding, or get other revenues that are coming in.
8 There's levee impact fee money that will come in.
9 Hopefully, development happens that will raise reviews
10 that come into our program to help fund things.

11 There's also elements out there, which are on our
12 program -- and I mentioned yesterday to you all -- about
13 Segment 1. We believe that Segment 1, which is all
14 funded -- it's about \$20 million worth of work in that
15 range. Construction is about maybe half of that in cost,
16 that we believe should actually be funded by the state.
17 And potentially, our application should get modified or
18 some way to work through that. We can't say that for
19 sure. But we think there's options to go through there
20 and we plan to reproach that for Prop 1E funds for next
21 year. This Prop 1E application was for this year.

22 There's another application that will come for
23 next year, which we will address with the state with other
24 options.

25 We have worked on the Yuba that is coming out of

1 existing funds that we will then put in applications, into
2 the future, for funding for that particular work.

3 And as for the funding along the Yuba, between
4 Simpson Lane and the Goldfields, we potentially have Prop
5 1E funds to do that work. We think that's important for
6 our flood efforts there.

7 So the concept there is, there's other
8 applications that are coming. Our partners within the
9 county and RD 784 truly do understand the need to complete
10 the project, and I think as sort of demonstrated by the
11 county, putting themselves on the line for the \$23 million
12 commitment through bonds and other funding to support the
13 project on it. And if we run into that issue, we'll have
14 to readdress it with them.

15 RD 784 recently identified under their own
16 structures that have come to the table and have provided
17 or will hopefully be providing funds from their own levee
18 fees on that, that represent almost a million dollars in
19 itself, that will come into our program. That's not
20 identified in my cash flow today, that they are being able
21 to raise.

22 So there's multiple sources. It is a grave
23 concern, to us, that we have to put, as the operating
24 agent for operating for the state, to maintain and improve
25 these levees, that the burden is on us to do the cost

1 overrun. Understand that we have the opportunity to get
2 \$138 million to complete the levees for our citizens that
3 live here. So we consider that important. Don't take it
4 lightly. But we have a multiple-tiered strategy to solve
5 that problem.

6 PRESIDENT CARTER: Any other questions for
7 Mr. Brunner?

8 VICE PRESIDENT HODGKINS: I wanted to ask a direct
9 question about that. If all of those mechanisms didn't
10 provide you enough money, can you raise any more?

11 MR. BRUNNER: Well, I think the answer to that,
12 Butch, will be determined upon what the dollar amount is.
13 I mean, if it is a huge disconnect and we have a huge
14 failure, then we have a problem. We all have that problem
15 on the levee system.

16 We end up -- our commitment with the county, our
17 hope is that we will be paying off through -- we're one of
18 the few communities that actually have the levee impact
19 fees that are charging for development. Hopefully, the
20 whole development thing turns around, and we start to
21 derive more revenues.

22 If we run into that issue, we'll be back before
23 you all having that discussion to complete the levees, on
24 what that cost overrun is. You are in no worse situation
25 than you are today, with no levees being built.

1 Do you want to comment?

2 MR. SHAPIRO: Scott Shapiro, Special Counsel for
3 Three Rivers.

4 I am the one who's actually drafting the amendment
5 to the funding agreement to implement this. So I thought
6 maybe it was worth explaining the specific mechanism
7 which, in part, goes to your question, Butch, and also
8 goes to Steve's earlier comment.

9 You will recall, for a long time, the \$135 million
10 number that's being bantered about. And that number is a
11 number that's raised from impact fees. It's an
12 already-approved impact fee for Yuba County. So the legal
13 mechanism is there still to raised up to \$135 million.

14 The question today is, how much are people
15 advancing so that money can get -- come in to do the work
16 before the development gets done? Because the development
17 is a ten-year buildout, most likely. And so that's the 30
18 million a year from the developers and the 23.3 million a
19 year from the County. Those are advancing of funds to
20 meet the obligation that we're currently estimating.

21 And that's why, when Paul talks about impact fees
22 being another source, RD 784 being another source, future
23 grants being another source, these are other sources that
24 supplement the advanced money. But we still have the big
25 picture impact fees that are sitting out there.

1 And at the end of the program, what the County
2 does, under the mello roos district is, it says, what was
3 actually the local share contributed here and then we
4 address -- adjust the impact fees, so we're not raising
5 money that isn't necessary at that point. But we're not
6 lowering the number yet; we're still leaving that 135 out
7 there in case we need more money, like you said, Butch.

8 So the question, six months or a year from now, if
9 the advanced funds wouldn't be enough, is not, can we
10 raise more money to pay for it? Because the money is
11 there. It's, how do we bridge the short-term gap between
12 dollars available a year from now and dollars that will be
13 coming in from impact fees over the long term.

14 The way the County bridged that gap a month ago,
15 when the County approved the funding plan, was by saying,
16 the County would advance certificates of participation in
17 the amount of 23.3 million. I'm confident the County does
18 not want Three Rivers to come back and say, "We need
19 another bridged loan," which will be repaid from impact
20 fees. But I don't represent the County. I represent
21 Three Rivers.

22 And if we need something to get the project done,
23 we're going to be going to 784 and the County and DWR and
24 everybody else and finding ways to bridge that short-term
25 funding gap. It's a cash flow issue. It's not an

1 ultimate dollars number.

2 I guess the final thing I wanted to note is, when
3 I met with DWR, I don't recall if you were in this
4 meeting, Paul, to say, thank you for the preliminary
5 award, and now we have to submit this big notebook. And
6 in your letter, you say, "Please, tell us how you are
7 going to meet any overruns."

8 I said to DWR, "What do you want in response to
9 that?"

10 And the response was, you have to tell us the
11 kinds of things that I just told you. But don't forget,
12 you have 17 million in contingency in your numbers, still.
13 And we, DWR, have evaluated the 17 million number, and we
14 think it's a reasonable contingency for this program, in
15 light of how far in you are, that we have reasonable
16 estimates for land values now, we have a very good sense
17 of what construction costs, having done \$133 million worth
18 of work, and therefore we have a reasonable contingency.

19 PRESIDENT CARTER: Thank you.

20 Any other questions?

21 MEMBER BURROUGHS: I have a couple of questions
22 and a couple of comments.

23 Thank you for the response on questions. And I
24 thoroughly enjoyed the tour yesterday. It was a wonderful
25 presentation, and your maps are always beautiful.

1 MR. BRUNNER: Thank you.

2 MEMBER BURROUGHS: On one of the questions, the
3 question was asked about future use of being able to have
4 the farmers have first option to be able to lease back
5 their land to farm.

6 And have there been farmers that are interested in
7 leasing back the land?

8 MR. BRUNNER: There have been a few that have
9 expressed interest. There was a -- one farmer --

10 MEMBER BURROUGHS: You don't have to tell me. I
11 just wanted to know.

12 MR. BRUNNER: There have been some. Not a lot,
13 but there have been some.

14 MEMBER BURROUGHS: I would like to know, have all
15 of the mitigation requirements for this project been met?

16 MR. BRUNNER: The environmental mitigation?

17 MEMBER BURROUGHS: Umm-hmm.

18 MR. BRUNNER: We have plans to meet them all.
19 There are still some things pending for us to complete.
20 The Bear River work was completed, that you saw yesterday.
21 There are some things along the Western Pacific
22 Interceptor Canal that we still need to work through.
23 Those are identified in our report.

24 MEMBER BURROUGHS: Approximately how many acres is
25 still going to be required, in your opinion, for

1 mitigation?

2 MR. BRUNNER: I would have to get that for you on
3 the -- what we actually have identified so far, we have
4 the mitigation measures in place to go forward. But what
5 I was responding to is one of executing them and putting
6 them -- and completing the actions for mitigation.

7 There are some things that we're working through
8 that if we end up taking the right -- taking a step, say
9 working on a levee, that we may then impact some type of
10 wetlands area, that will cause an increased mitigation for
11 us.

12 MEMBER BURROUGHS: Okay. And then this is my last
13 question. And then I have a couple of comments.

14 But in the reports, you mention that TRLIA will
15 acquire the land and that at some later date, it then will
16 turn over the land to DWR.

17 Is there any other agencies that you could have
18 turned the land over to?

19 MR. BRUNNER: You're referencing the Feather River
20 work?

21 MEMBER BURROUGHS: In regards to the condemnation
22 of land for the setback levee.

23 MR. BRUNNER: All discussions so far as we go to
24 transfer property, since DWR is paying essentially
25 95 percent of that acquisition is that they would become

1 the recipient of that land.

2 MEMBER BURROUGHS: It seems like a little bit of a
3 conflict of interest to me when the purpose is for flood
4 maintenance and not land acquisition that gets back to the
5 state.

6 So here comes my comments. Of course I speak for
7 agricultural, and I am very concerned about agricultural.
8 And at the current rate of loss of ag land, by the year
9 2040 there will not be enough land in California to feed
10 the people of this state. And right now, we rank sixth in
11 the world, if we were its own nation.

12 And my comment would be that just as there have
13 been provisions for habitat, I would like to speak as a
14 voice for agriculture, that I would like to see a creation
15 of possibly researching the land being given maybe back,
16 in perpetuity, for agriculture use since originally that's
17 what the land was for. And I don't know if that's
18 something that -- it's just a comment. I would like to --

19 PRESIDENT CARTER: I don't know that --

20 MEMBER BURROUGHS: I stopped because I'm speaking
21 and I was interrupted by the question.

22 So as I said, this was a comment. And so I just
23 wanted to speak on behalf of preserving agriculture if
24 there's any way to do that. It seems like I have heard
25 that there are some places that agriculture land also has

1 mitigation. And I don't know if in this particular area,
2 if there had been any discussion about mitigating for ag
3 land. And those were just comments that I wanted to make.

4 PRESIDENT CARTER: Okay. Thank you.

5 Any other questions for Mr. Brunner?

6 MR. BRUNNER: Can I make one comment on some
7 additions for the restoration area?

8 PRESIDENT CARTER: Very briefly.

9 MR. BRUNNER: The restoration area that we have
10 right now, we had identified, in our EIP submission,
11 \$8 million for environmental restoration work to go
12 through. That was not part of the application. DWR asked
13 us to really keep that in the federally funded area, to
14 work through that, and the Yuba Basin Project effort and
15 benefit-cost ratio. So that's still pending.

16 Right now, we are acquiring the property. Three
17 Rivers will mostly likely manage that area for a couple of
18 years, at least, until we make the transition and
19 determine what's going to happen.

20 We'll be building a plan with DWR, the floodway
21 management, and how that works, and working with a lot of
22 farmers out there, as we have the land to do agriculture.

23 My board really does support agriculture, and
24 supports that. And the direction that they have given to
25 me is to maintain as much agriculture as possible, as we

1 blend that with the mitigation measures or restoration for
2 environmental.

3 PRESIDENT CARTER: Thank you.

4 MR. BRUNNER: That's it.

5 PRESIDENT CARTER: Thank you.

6 A couple of folks from the public wanted to
7 address this particular item.

8 Mr. Rice?

9 MR. RICE: Thank you. I am Thomas Rice, owner of
10 Rice River Ranch. I will try to keep my comments brief
11 again today.

12 This is in regard to the compromise work we are
13 doing with TRLIA. And as the current Board knows -- and I
14 thank you for the, new members, for coming in, in the
15 middle of this and trying to make sense of this difficult
16 compromise.

17 But we have, after difficult conflicts and
18 negotiations over the past year and a half, we have,
19 thanks to the help of this Board, a working compromise
20 agreement pending with TRLIA.

21 But at this point, this is still a tentative
22 compromise to which we need TRLIA to commit in both fact
23 and in time.

24 Yes, they do have reviews pending. We realize
25 they have issues they are trying to work through there.

1 But that is the case for the entire project. Everything
2 is still under review. And the designs are progressing
3 elsewhere on this project as if the reviews will, in time,
4 will be acceptable or workable. The same should be
5 happening for this stretch of the project.

6 Ladies and gentlemen, TRLIA are not the only ones
7 that have to deal with timing, seasons, contracts, and
8 financial matters. Our farm does as well.

9 Trees, like levees, have only certain times when
10 work can occur. Planting and tree movement, which is one
11 of the key elements of the compromise, must be completed
12 before mid February, while trees are dormant, which starts
13 in mid November.

14 And other such farm activities need to be
15 interwoven with this, such as orchard rework aspects like
16 clearing, irrigation piping changes, soil works, advanced
17 replacement boring and more.

18 This is a complex dance we need to do with TRLIA,
19 and it needs to be planned out. Ladies and gentlemen, we
20 need TRLIA to firmly commit to this compromise and to an
21 acceptable timeline, or, alternatively, to admit that the
22 situation is such that our financing schedule has slipped
23 a year and that our farm should proceed as is for one more
24 season.

25 Please understand, I am not asking or hoping for a

1 slip, but we are all trying to be realistic here. In
2 either way, we need a decision, a commitment, and a
3 timeline, so that we can all move forward and complete
4 this dance, get our levees done, and get our orchards and
5 our farms moving forward.

6 I do thank you for all the assistance you have
7 rendered so far. It has been instrumental in this
8 compromise, coming forward. And I would like to ask the
9 Board to ask your staff to simply encourage TRLIA to make
10 this commitment, to make this their primary plan, and to
11 move forward with the commitment and timeline so that we
12 can all proceed here.

13 I thank you again for your time, your attention,
14 your patience. And I will gladly take any questions.

15 PRESIDENT CARTER: Thank you.

16 Any questions for Mr. Rice?

17 SECRETARY DOHERTY: So they have given you no
18 timeline to complete?

19 MR. RICE: We have -- the last we had heard was a
20 meeting we had at my attorney's office, that everything
21 was still pending for reviews and DWR reviews. And I
22 understand they have to go through this review, but they
23 have to do that for the entire project.

24 I would like to see the commitment that this is
25 their primary design, that the staking, the surveying, the

1 testing, and so on, makes that commitment, that we get a
2 rough timeline based upon when they think they are going
3 to get their funding, so we can make our 80 percent
4 commitments -- our funding, our planning, our purchasing,
5 our work as well. We need to make this dance work
6 together.

7 MEMBER RIE: Mr. Brunner, do you need some sort of
8 permit from this Board in order to make a commitment to
9 the Rice family?

10 MR. BRUNNER: I don't think we need a letter from
11 the Board. I think our overall commitment is shown by our
12 application and identification of the compromise to the
13 Corps and to the State of the solution that we offered up
14 to do.

15 What we -- as far as schedule goes, we have talked
16 to the Corps, talked to the State, about where to go.
17 They have asked for additional borings along alignment,
18 that small shift that we were making, to do. This
19 morning, I was on the phone again with my staff to find
20 out the timing with that. We're planning to be in the
21 field to do those borings next week, to get that
22 information with the Corps. The Corps has made some
23 changes in personnel. Can't speak for them on that issue
24 specifically, but we know the timeline. We know that the
25 Rice family has just, on the eminent domain issues

1 themselves -- that they have legal actions. We tried to
2 work with them to extend timelines for when they would
3 file or need to file. I believe that's in the November
4 time period.

5 So our goal is to get back the information from
6 the Corps ASAP and keep the pressure on and the dialogue
7 with them and also working with the State. We did get
8 their comments on alignment and designs so far, and
9 responded. We have responded back to their comments on
10 our design, to date, both to the State and to the Corps.
11 We'll keep the pressure up.

12 SECRETARY DOHERTY: Regardless of whether the
13 Corps has proceeded in a timely manner or not, you have
14 funds available and you could proceed with this issue here
15 and acquire what it is you are going to need to acquire.

16 Could you not?

17 MR. BRUNNER: Well, we actually extended an offer
18 for the Rice family to purchase other property. And that
19 funding, for that whole alignment process that we have, we
20 have done that. And the funds are there. And that's
21 where we are in the eminent domain process.

22 It's key for us with the Corps, as we made this
23 little slight adjustment on the alignment to accommodate
24 the row of trees, is that we get buy-in on that design
25 from the Corps and from the State that that's acceptable

1 to them, or else it does no good to have TRLIA's
2 commitment. Because our commitment doesn't mean anything,
3 we're not the ones that will sign off and certify the
4 levees.

5 They need to -- we need to push for the Corps and
6 the State to agree to that tweak that we made to
7 accommodate the Rice family and then move forward. And so
8 that's where the real issue is.

9 I mean, from our vantage point, I'm waiting for
10 the information -- the nod from the State and also from
11 the Corps saying, "Okay." And I think they are waiting
12 for those Corps investigations, those borings. We have
13 two more borings to get that information --

14 PRESIDENT CARTER: To a certain extent, we're
15 getting to talk about Item 10.A. So I wanted to try and
16 reserve some of that discussion for that item. I have to
17 move on, if we can.

18 MR. BRUNNER: I can lay out a temporary schedule
19 based upon funding, but it's really speculative based upon
20 certain things happening. But we can do that.

21 SECRETARY DOHERTY: It's just difficult to be in
22 limbo. That's all.

23 MR. BRUNNER: Understand.

24 PRESIDENT CARTER: Okay. Any other questions for
25 Mr. Rice?

1 Thank you very much.

2 Mr. Eres?

3 MR. ERES: Good morning, President Carter, members
4 of the Board.

5 My name is Tom Eres. I represent Hofman Ranch.

6 Thank you, Mr. President, for making comments
7 about the letter or, I guess, this response to a number of
8 questions that were asked at the subcommittee. And I
9 thank you for having that subcommittee meeting.

10 We do not have, yet, a copy of those and have not
11 had an opportunity to review them, and look forward to
12 doing so.

13 I know we have a big meeting and the big issue's
14 at 1 o'clock, so I will try not to get into those issues
15 and reserve my comments for those.

16 PRESIDENT CARTER: Appreciate that.

17 MR. ERES: I would like the record to reflect that
18 in the status report of Three Rivers under Item Segment 2,
19 and it's under Item F -- Mr. Brunner referred to Items F
20 and G.

21 We continue to urge the Board to participate with
22 the Corps of Engineers and Three Rivers in this notion,
23 that somehow you can separate the Section 408 permit with
24 the permit to move forward with what they are calling
25 Phase 1, now referring to as a back-up levee. It defies

1 common sense.

2 We all know what the effort is here and it's to
3 put this full setback levee in place. And the idea that
4 you don't integrate NEPA with CEQA, and that the Board
5 doesn't get the advantage of that integration. And when
6 you have the opportunity to take a look at whether or not
7 this alignment and this project meets your expectations
8 and your requirements, to somehow have this, I'm going to
9 call it a facade, that the Corps of Engineers will back
10 off of the requirement of a 408 permit for what they are
11 now calling the Phase 1, to do the back-up levee, and then
12 they will only look at a 408 when that levee has been
13 built, and then they will look at tearing down the
14 existing levee. Oh, and for that, they'll need a 408
15 permit.

16 Logic would tell you, it doesn't make any sense to
17 do it that way. It should be an integrated project. And
18 everybody knows where the feds are, everybody knows where
19 the state is.

20 So I am suggesting that the Reclamation Board
21 inject itself into the discussion between the Corps of
22 Engineers and Three Rivers.

23 I also applaud the concern with respect to the
24 finance program that Three Rivers is putting forth for
25 this Segment 2. The County did a dramatic thing a couple

1 of weeks ago, and they actually committed the general fund
2 of the County for \$53.3 million. The certificates of
3 participation are for 23.3, but the County is at risk.

4 If developers don't produce \$30 million because
5 the market continues to go south, the County is
6 representing to the State that they are going to stand
7 good for the full \$53.3 million. And I'm not sure all the
8 taxpayers of the County fully understand that yet.

9 But my understanding is, that is a cap. I
10 appreciate the point that it is a cap of the
11 \$138.5 million. So this issue of cost overruns is a
12 significant part of concerns DWR has and I -- I'm glad
13 that you have those concerns, because we're talking about
14 change orders, cost overruns. It's still not clear
15 whether the state is going to allow the Three Rivers to
16 simply put a chip in and get paid, or do they have to
17 advance the money and seek reimbursement? These are still
18 some questions that are a little bit, if I will, unclear.

19 And I would recommend that you look at the finance
20 plan for the feasibility of making this thing work, very
21 carefully.

22 President Carter, you asked about the audit. We
23 have just received a copy of it. I represented at the
24 subcommittee, it was my recollection the Joint Power
25 Authority required annual audits. It does. They are not

1 conducted. So they are now trying to bundle them together
2 and move them forward to the Department of Water
3 Resources.

4 I'm not sure that the paperwork they are calling
5 an audit is, in fact, an audit as is required by state
6 law. We're looking at that. This is an audit of
7 financial condition. That is not an audit of the records
8 of Three Rivers and how they have handled the hundred-plus
9 million dollars that they have spent to date. And I
10 suspect that's something you all may want to look at too.

11 But thank you very much, and I will see you at the
12 1 o'clock item.

13 PRESIDENT CARTER: Thank you, Mr. Eres.

14 Any questions?

15 Okay. Very good.

16 This concludes Item 6.

17 We will move on to Item 7, which is now part of
18 the requested actions. Levee Maintenance Easements --
19 Kimball Hill Homes, Inc., and Access Easement to the River
20 Walk Homeowners' Association San Joaquin County.

21 Ms. Guebara, are you here?

22 I think what we may do here, ladies and gentlemen,
23 is, we will have a staff report on this, and then attempt
24 to break at noon or close to there, when there seems to be
25 a logical break in the discussion.

1 MS. GUEBARA: President Carter and the rest of the
2 Rec Board, Mr. Morgan and staff, I am Olivia Guebara,
3 Right-Of-Way Agent, Real Estate Branch, Division of
4 Engineering in the Department of Water Resources.

5 And I am the reincarnate of Mr. Fong, who you are
6 used to having stand before you on property management
7 issues. That is because Mr. Fong is going to be retiring.
8 So I hope you all give him a bad time.

9 So I am here. This is my first presentation to
10 you. And this is regarding Kimball Homes. And while we
11 have it as an action item and not consent is, there's a
12 couple of changes. I am going to be asking you for two
13 actions. It's the same property.

14 This is in central -- right by UOP, a very small
15 housing development, about 120 units -- 120 lots south of
16 the Calavares River and Pershing Avenue, right by UOP.

17 And basically, this development, the land we
18 have -- it has been -- there's access at the toe of the
19 levee. There's a 10-foot access easement that Kimball
20 Homes -- this is the association -- this is the builders
21 of the home -- would like to provide to the Rec Board as a
22 requirement from the City of Stockton. This is for
23 maintenance purposes.

24 And the reason that we now have it as an action
25 item is, one of those properties that's on your -- lot 45,

1 that's on your handout there, has been sold. So that now
2 comes from an individual, which is the Murphys -- the
3 Humphreys. And they have signed the easement deed. So we
4 have the signatures of Kimball Homes, the developers, and
5 the easement from the Murphys for the toe-plus, in.

6 And the staff report, as far as the background and
7 the recommendations, would still be relevant to this
8 particular action item.

9 And so I would -- I would need to have a motion
10 that you would accept the easement, no cost, from Kimball
11 Homes.

12 PRESIDENT CARTER: Okay. Are there any questions
13 for Ms. Guebara?

14 Okay.

15 So staff has requested a motion to consider the --
16 accepting the easements of levee toe plus 10 feet on the
17 landside of this levee, from Kimball Homes, and the Murphy
18 family.

19 MS. GUEBARA: The Humphreys.

20 PRESIDENT CARTER: I'm sorry. The Humphrey
21 family.

22 Do we have a motion?

23 MEMBER RIE: So moved.

24 PRESIDENT CARTER: We have a motion.

25 Do we have a second?

1 SECRETARY DOHERTY: I will second.

2 PRESIDENT CARTER: We have a motion and a second.

3 Any discussion?

4 All those in favor, indicate by saying "aye."

5 (Ayes.)

6 PRESIDENT CARTER: And opposed?

7 Motion carries.

8 MS. GUEBARA: Thank you.

9 The second part to this is on the levee, on the
10 levee itself, right there, at Calavares. There is already
11 a public access owned -- easement owned by the City of
12 Stockton for recreation.

13 There has been a handicap ramp. The Z handicap
14 ramp was installed so that there could be access to this
15 recreational part of the levee, the walkway right there,
16 on top. River Road.

17 And so that access would be -- the Rec Board would
18 be providing it to the home -- River Walk Community
19 Association, which is the homeowners association for that
20 development area.

21 And so I would ask for a motion that you would --
22 that the Reclamation Board would adopt -- would provide
23 this easement to the association.

24 SECRETARY DOHERTY: So they would maintain it?
25 We're not maintaining it?

1 MS. GUEBARA: Correct. We would not be
2 maintaining it.

3 SECRETARY DOHERTY: We are just simply granting
4 them access?

5 MS. GUEBARA: Correct.

6 MEMBER BURROUGHS: I have a question for legal
7 counsel. It could be a liability.

8 PRESIDENT CARTER: Mr. Morgan, would you like to
9 address that?

10 LEGAL COUNSEL MORGAN: Sorry. Could you describe
11 the easement? Have I reviewed this, or was this Nancy who
12 did this?

13 MS. GUEBARA: Nancy.

14 LEGAL COUNSEL MORGAN: Nancy.

15 MS. GUEBARA: Do you want to see that particular
16 easement?

17 SECRETARY DOHERTY: No. That's all right.

18 MEMBER BROWN: Mr. Chairman?

19 PRESIDENT CARTER: Yes, sir.

20 MEMBER BROWN: Might I ask if staff has been out
21 to see this easement and the handicap ramp, to take a look
22 at it?

23 MS. GUEBARA: Yes, we have. It's very nice,
24 clean. It's a -- it's gated at the bottom so that the
25 homeowners association -- basically you can walk into it,

1 but coming back off of the levee and down the ramp, you
2 have to have the code to open the gate to get back into
3 the community area.

4 SECRETARY DOHERTY: And this was the permit
5 granted in September of '06; correct? The previous
6 action? We gave a recommendation for the construction of
7 the concrete ramp?

8 MS. GUEBARA: To construct, yes. And now we're
9 coming back and asking for an easement for that.

10 PRESIDENT CARTER: Basically, it's an access
11 easement.

12 MS. GUEBARA: Correct. And it is specifically for
13 handicap.

14 PRESIDENT CARTER: And no fee? No fee?

15 MS. GUEBARA: Correct.

16 CHIEF ENGINEER BRADLEY: You are granting an
17 easement so that they can do the maintenance. They cannot
18 maintain something they don't have access to the property
19 for. So what you are doing is granting them access to the
20 property so they can maintain it. We have these with most
21 of our maintaining agencies. We get -- you know,
22 especially where we own property in fee, and we control
23 all the easements, then for somebody to maintain it, we
24 give them a maintenance easement.

25 SECRETARY DOHERTY: Apparently, the staff had

1 reviewed this and recommended that we accept an easement.

2 LEGAL COUNSEL MORGAN: I was not the lawyer who
3 reviewed it for legal. Just glancing at it, I don't see
4 any problems. I could look at it over lunch, if you want
5 me to spend some more time on it. But I don't see any
6 problems, just off the top of it.

7 SECRETARY DOHERTY: Well, having read through
8 this, I don't see a problem with it.

9 And I would like to make a motion that we
10 accept -- that we grant them the easement.

11 MEMBER RIE: Second.

12 PRESIDENT CARTER: We have a motion and a second.

13 Any discussion?

14 All those in favor, indicate by saying "aye."

15 (Ayes.)

16 PRESIDENT CARTER: And opposed?

17 MEMBER BURROUGHS: Aye.

18 It wouldn't have hurt to wait until after lunch.

19 MS. GUEBARA: Thank you.

20 PRESIDENT CARTER: Motion carries.

21 MS. GUEBARA: Thank you.

22 Thank you, Steve, for that clarification.

23 PRESIDENT CARTER: Very good. Thank you very
24 much, Ms. Guebara.

25 At this point, we will go ahead and break for

1 lunch.

2 We will reconvene here at 1 o'clock to continue
3 our Agenda Item 9. So with that, we are in recess.

4 (Thereupon a break was taken in
5 proceedings.)

6 PRESIDENT CARTER: Good afternoon, ladies and
7 gentlemen. If I could ask you to take your seats, we'll
8 go ahead and continue with the State Reclamation Board
9 meeting.

10 Before we get going with our business, I did want
11 to -- on behalf of the Reclamation Board, I was remiss
12 this morning when I did not thank the citizens of Yuba
13 County and the government for allowing us to have our
14 meeting this month here, in Marysville. We really do
15 appreciate your hospitality. These are wonderful
16 facilities to do this, and so we really do appreciate
17 that.

18 Thank you very, very much.

19 As you recall, we are on action items -- requested
20 actions at this point. And we are on Item No. 9, Board
21 Order 07-01, Abandonment of Pipe Authorized by Permit No.
22 263, Maintenance Area 9, Sacramento County.

23 And this is Mr. Huitt. Good afternoon. Welcome.

24 MR. HUITT: Thank you. Good afternoon, President
25 Carter and members of the Board.

1 (Thereupon an overhead presentation was
2 presented as follows.)

3 MR. HUITT: I am acting today on behalf of my
4 supervisor Mark Herold, who was unable to be here today.
5 So he has asked me to present this to you for action on
6 M&H Realty Partners, Board Order 07-01.

7 For the record, my name is Christopher Huitt, and
8 I am an environmental scientist. I'm the CEQA coordinator
9 for the Reclamation Board.

10 So I will go through this pretty quickly and give
11 you a bit of background and give the procedure for which
12 the proposed action will take place for decommissioning of
13 the pipeline.

14 --o0o--

15 MR. HUITT: The requested Board action, the
16 Reclamation Board staff, requests the Reclamation Board to
17 issue Board Order 07-01 for Maintenance Area 9, for the
18 Department of Water Resources, to abandon the pipe
19 crossing under the left bank of the Sacramento River at
20 levee mile 9.08, and close permit 263.

21 --o0o--

22 MR. HUITT: The location of the said pipe is just
23 north of Freeport. And there's an associated valve and
24 pump structure located alongside State Highway 160.

25 --o0o--

1 MR. HUITT: Here is a map of the actual area of
2 where that particular pipeline is. As you can see, the
3 area is along Freeport Boulevard, Highway 160, just north
4 of Freeport.

5 --o0o--

6 MR. HUITT: Permit 263 was granted by the
7 Reclamation Board on April 24th of 1923. The permit --
8 the permit permitted the installation of a 14-inch wrought
9 iron pipe, through the level, on the left bank, at mile
10 9.08. The permit also included a small valve and pump
11 house on the east side of the highway. The pipe passes
12 underneath the highway and also a set of railroad tracks
13 that were originally owned by the Sacramento Southern
14 Railroad.

15 --o0o--

16 MR. HUITT: The Corps of Engineers sent a letter
17 to General Manager Punia on November 1st of last year,
18 with concerns of the condition of the pipe through the
19 levee. Staff performed a search of past encroachment
20 permits in the area and determined that the pipe in
21 question was permitted under the said permit.

22 --o0o--

23 MR. HUITT: The pipe is abandoned -- if the pipe
24 is abandoned, it should be treated in accordance with
25 Title 23, Waters of the State, as well as Title 23,

1 Waters -- California Code of Regulation, Article 8,
2 Section 124, abandoned pipelines and conduits. And that's
3 in the Attachment C of the report that was provided to
4 you.

5 The pipe currently -- if the pipe is active, then
6 the supporting documents shall be submitted to ensure that
7 the pipe is in compliance with Title 23 for Pipelines,
8 Conduits, and Utility Lines.

9 --o0o--

10 MR. HUITT: If the pipe is not in compliance, it
11 should be -- it should pose a threat to the Sacramento
12 area by creating a discontinuity in the level, which could
13 act as a conduit to carry floodwaters through the levee
14 and into Sacramento.

15 --o0o--

16 MR. HUITT: The Corps has requested with FEMA
17 certification requirements for the levee system in the
18 area. With the discontinuity in the levee, the Corps
19 would not be able to certify this levee. If the Corps
20 could not certify the levee, then FEMA would not credit
21 the levee, leaving a hole in the Sacramento River levee
22 system.

23 --o0o--

24 MR. HUITT: The DWR Real Estate Branch performed a
25 property search. And it was discovered that M&H Realty

1 Partners is the current owner of record for that parcel.

2 --o0o--

3 MR. HUITT: On July 26th of this year, the Board
4 sent a letter to M&H Properties. It stated that -- what
5 its intentions were: to submit a request to change the
6 permittee through a Rec Board permit from William Dee to
7 M&H Realty Partnership, verify the integrity of the pipe,
8 or as per Title 23, the pipe shall have a readily
9 accessible positive closure device installed on the
10 waterside of the levee to prevent any uncontrolled flow of
11 water into the Sacramento area.

12 --o0o--

13 MR. HUITT: M&H had sent a letter on
14 September 7th requesting a 30-day extension, which is
15 Attachment E of the report, that was sent to you. And
16 courtesy of the chief engineer of the Reclamation Board
17 verbally granted for this request.

18 --o0o--

19 MR. HUITT: It was verbally conveyed to DWR by M&H
20 that they were no longer interested in continuing with
21 retaining the permitted encroachments and did not want to
22 accept the permits.

23 A confirmation has since been sent, which is the
24 letter that I have subsequently passed out.
25 Ms. Pendlebury has since given it to you.

1 --o0o--

2 MR. HUITT: And they stated in here that they do
3 not wish to continue and they would like to go ahead with
4 the closure of the said pipeline.

5 --o0o--

6 MR. HUITT: And since these were some of the
7 different options, the method -- the preferred method of
8 abandoning the pipe is to remove completely. But since it
9 passes through a slurry wall already, then that would pose
10 a problem structurally for that part of the levee as well.
11 And since the -- this is a slurry wall that was
12 constructed by the Corps, and it's under a railway, and it
13 was determined that grouting of the pipe is probably the
14 best alternative for this closure.

15 --o0o--

16 MR. HUITT: So in summary, the Corps has requested
17 the Board to determine if the pipe under -- if it is going
18 to be maintained active or abandoned. The current owner
19 has already disclosed that they wish to abandon this pipe.
20 An inspection was requested by the Corps to determine the
21 integrity. And without the inspection, FEMA certification
22 would be in question.

23 --o0o--

24 MR. HUITT: A property search was performed, and
25 M&H is the current owner. And then since they have

1 contacted us beyond the 30-day additional time period,
2 that they do want to close it --

3 --o0o--

4 MR. HUITT: -- which I had stated there.

5 So this is their intent, now dated October 5th,
6 that they wish to abandon it.

7 --o0o--

8 MR. HUITT: The staff recommendation is to
9 recommend issuing Board Order 07-01 directing DWR to
10 abandon the pipe in accordance with the standards of Title
11 23 and close Rec Board Permit 263.

12 --o0o--

13 MR. HUITT: And here's the procedure for
14 abandonment.

15 Abandonment of pipes within the levees can be
16 accomplished by two procedures -- removal of the pipe by
17 open cut of the levee, and because of the current
18 situation, that's not desired. Capping and filling of the
19 pipe with cement grout is the preferred method.

20 --o0o--

21 MR. HUITT: Criteria for influencing the procedure
22 for abandoning, because it's an oversized levee, state
23 highway is over a section of the pipe, as well as the
24 railroad track section is over the pipe as well. And it
25 penetrates a seepage cut off wall that's already in place

1 by Army Corps.

2 Rec board staff recommends abandoning the pipe
3 using the cement grout method.

4 --o0o--

5 MR. HUITT: The procedure in a nutshell. There is
6 also a procedure that's in the report that's been provided
7 to you.

8 Locate both ends of the pipe and remove any
9 remaining pipe that extends outside the slope of the
10 levee. Remove any particular remaining pipe extending out
11 into the project panel. Sever the pipe 3 feet below the
12 waterward levee side and one foot below the landward levee
13 slope. And remove any remaining extra pipe extending
14 landward.

15 --o0o--Flush and calculate the volume of the remaining
16 pipe. Cut a hole in the top. Install a closeable air
17 vent so that the air would have somewhere to go when the
18 grouting process commences. Cut a hole. Install the air
19 vent. And then weld the plates on the water end of the
20 pipe. Cut a hole in the top. Install -- cut a hole and
21 then install the grout connection on the landward end of
22 the wiper. Back fill and compact excavations to at least
23 the density of the adjacent undisturbed material.

24 Basically, you can't remove any and all -- much of
25 the current pipe as possible. Weld on the waterside pipe.

1 Fill and compact. And then when the procedure starts to
2 fill with the grouting cement, and once that's all done,
3 remove the fitting.

4 --o0o--

5 MR. HUITT: So that's the end of the procedure.

6 If there are any questions?

7 SECRETARY DOHERTY: Yes. Do you do the work or
8 does the Department of Water Resources do the work?

9 MR. HUITT: The Department of Water Resources
10 Maintenance Area 9 staff would conduct the actual
11 abandonment of the pipe.

12 SECRETARY DOHERTY: That brings up a question.

13 There are 7,000 diverters on our river. And
14 recently, rules and regulations have changed concerning
15 pipes going through the levee. Are all 7,000 of those
16 diverters going to be notified of the changes?

17 PRESIDENT CARTER: I think, Mr. Punia, you were
18 going to address that during your general manager's
19 report.

20 SECRETARY DOHERTY: Oh, all right. Then I will
21 wait.

22 Yeah. But I have no problem with the abandonment
23 of the pipe as long as it's done properly.

24 MEMBER SUAREZ: Mr. President, I have a question.

25 PRESIDENT CARTER: Yes, go ahead, Ms. Suarez.

1 MEMBER SUAREZ: Could you talk a little bit about
2 the costs associated with this process?

3 MR. HUITT: The costs that are associated with
4 this -- I'm sure Mr. Swanson would probably be a little
5 bit better with funding issues on this, since this is an
6 area that is already maintained by the Department of Water
7 Resources.

8 MEMBER SUAREZ: It's my -- I'd like to know how
9 much it's going to cost and why is it that the state is
10 paying for it and not --

11 MR. SWANSON: Actually, it would be funded by
12 Maintenance Area 9, which is reimbursed by the property
13 owners that are protected. The state will get reimbursed
14 for that.

15 As far as the cost, you know, staff is just now
16 starting to work on the technical details of what's it
17 going to take to get this pipe closed up. This provides a
18 little bit of a challenge because the pipe is below the
19 ground level. It goes under the ground, out into the
20 middle of the river. And so we're kind of wondering what
21 kind of water conditions we're going to have to deal with.
22 And what we would envision, we would probably have to
23 cable an excavator down the waterside slope before we get
24 to the water, dig a big hole right there, expose the pipe,
25 probably do some dewatering so that we can cut the end and

1 get a closure off. And then we put a grout pipe in there,
2 and we'll go in the other end and pump it in and try to
3 fill it up.

4 Off the top of my head, if I just had to pull a
5 number, I would say something like \$10,000.

6 SECRETARY DOHERTY: If this pipe is 74 or 75 years
7 old, and you have to put a camera through there, and it's
8 a cast iron pipe, I wouldn't think it would extend to the
9 middle of the river any longer.

10 MR. SWANSON: Yeah. Looking at the exposed end of
11 the landside, it's a steel pipe. And so I'm not -- I
12 wouldn't be surprised if this hasn't been changed out over
13 the years and we just don't have the records of it. I
14 can't imagine that a cast iron pipe or wrought iron pipe
15 would survive that long. And certainly, what we see
16 coming into the valve fault is a more modern steel pipe.

17 PRESIDENT CARTER: Any other questions of staff?

18 I have one question on the Board order, the draft
19 Board order that's in the package. It says, "You are
20 hereby ordered to remove the abandoned pipe."

21 Do we want to change the language on that to say,
22 "You are hereby ordered to abandon the pipe according to
23 Section -- Title 23"?

24 MR. HUITT: We could always draft the language to
25 reflect what the standard would be in the regulations.

1 PRESIDENT CARTER: Okay.

2 MR. HUITT: If it means to direct DWR to do that,
3 that's what the standards for the Rec Board is, then we
4 would go by that.

5 PRESIDENT CARTER: You know, I think if the staff
6 recommendation is not to remove the pipe, it is to be
7 abandoned in place.

8 MR. HUITT: Correct.

9 MEMBER BROWN: Mr. Chairman, I'd like to hear
10 again why the property owners are not responsibility for
11 the proper abandonment of the pipe.

12 MR. HUITT: Mr. Bradley, thank you.

13 CHIEF ENGINEER BRADLEY: There's a disconnect
14 between permits and lands. The permit is issued to an
15 individual. This property has changed hands. It's now
16 owned by a different entity. They asked them if they
17 wanted to keep the encroachment. If they wanted to keep
18 this encroachment, they needed to verify that it was still
19 good with an inspection, install a waterside cutoff valve
20 and ask for the permit to be assigned to them. They chose
21 not to do that. Therefore, the encroachment is there with
22 nobody being responsible for it. It is in a maintenance
23 area.

24 For us, I mean, it happens to be the state, here,
25 that runs this maintenance area. But it's the same if it

1 had been any reclamation district. We would have ordered
2 them also to take care of any encroachment that nobody was
3 maintaining.

4 SECRETARY DOHERTY: So it's not in their deed?

5 CHIEF ENGINEER BRADLEY: Not in their deed. There
6 is a disconnect a little bit by issuing a permit. I've
7 asked this before of several counsels, where the permits
8 go with the land or the owner. And I've gotten mixed
9 messages.

10 But basically I don't think there's any way to
11 make the present owner responsible for it. They didn't
12 apply for it, they didn't install it, it's not on their
13 deed. So when they chose not to accept the encroachment,
14 then we were forced to request DWR or ask the Board to
15 order DWR to properly abandon it as part of their MA9
16 maintenance activities.

17 MEMBER BROWN: You will concur with that?

18 LEGAL COUNSEL MORGAN: I don't exactly agree with
19 the legal reasoning of my former counsel, Mr. Bradley.
20 But I do think there's ways to make the property owner
21 responsible. They obviously are required to know what
22 they are buying, if they're buying property, if there's a
23 pipe there, even if it's not on the deed, just as with
24 unrecorded easements.

25 I think this is more of a practical matter than it

1 is a legal matter by directing the Department of Water
2 Resources to take care of the problem. Something that
3 is -- could be a very time-consuming and difficult process
4 to get enforcement and get the property owner to deal with
5 quickly, and the cost not borne by the state but by the
6 area protected by the maintenance area.

7 And then the levees would be certifiable by FEMA.
8 Whether or not the Department wants to pursue options to
9 get that money specifically from the landowner, as opposed
10 to billing the maintenance area at large is a decision for
11 the Department to make, just as if the Board were to
12 direct a reclamation district to do the work whether they
13 would pursue their legal remedies against the one
14 landowner versus just doing the work and building the
15 entire district.

16 MEMBER BROWN: What about a precedent?

17 LEGAL COUNSEL MORGAN: Well, in this case, what
18 the Board is doing is trying to get the work done through
19 the entity responsible for the levee, in this case, the
20 state of California through the reclamation district.
21 There's been no proposal by staff to bring some kind of an
22 encroachment action or enforcement action simply to get
23 this work done by the entity responsible for it. And at
24 that end, they can make a decision of whether they want to
25 collect the money from the individual property owner or

1 from the property owners at large.

2 MEMBER BROWN: Do you have a recommendation?

3 LEGAL COUNSEL MORGAN: Legally, I don't think it
4 creates a binding precedent for the Board to issue this
5 sort of an order and leave discretion with the reclamation
6 district or, in this case, the maintenance area. So I
7 would tend to concur with what the staff recommendation
8 was in the interest of getting the flood control problem
9 solved as quickly as possible.

10 MEMBER BROWN: Thank you.

11 PRESIDENT CARTER: Any other questions for staff?

12 So what staff is asking us to do is to approve
13 Board Order No. 07-01 to abandon this 14-inch metal pipe
14 in place, on the Sacramento, according to California Code
15 of Regulations Title 23, Division 1, Article 4.

16 VICE PRESIDENT HODGKINS: So moved.

17 PRESIDENT CARTER: We have a motion.

18 Do we have a second?

19 MEMBER RIE: Second.

20 PRESIDENT CARTER: Motion and a second.

21 Any further discussion?

22 All those in favor, indicate by saying --

23 Did you want to say something, Rose Marie?

24 MEMBER BURROUGHS: Thank you. I do have a
25 question.

1 What was the purpose, the original purpose, of
2 placing the pipe there?

3 MR. HUITT: It was for irrigation purposes.

4 SECRETARY DOHERTY: What?

5 MR. HUITT: Irrigation.

6 PRESIDENT CARTER: Any other, further discussion,
7 questions?

8 All those in favor indicate by saying "aye."

9 (Ayes.)

10 PRESIDENT CARTER: And opposed?

11 Motion carries.

12 MR. HUITT: Thank you very much.

13 PRESIDENT CARTER: Thank you.

14 Moving on to applications, Item 10.A, Three Rivers
15 Levee Improvement Authority Application No. 18227, Yuba
16 County. Consider delegation of authority to the general
17 manager to send a letter to the Sacramento District, the
18 U.S. Army Corps of Engineers, requesting Section 408
19 approval to alter the federal flood control project by
20 constructing 5.7 miles of setback levee and degrading the
21 existing federal levee replaced by the setback levee after
22 the setback levee has been accepted as a project levee by
23 the Corps.

24 Mr. Bradley, good afternoon.

25 CHIEF ENGINEER BRADLEY: Good afternoon. I'm

1 Steve Bradley, chief engineer for the Reclamation Board.

2 (Thereupon an overhead presentation was
3 presented as follows.)

4 CHIEF ENGINEER BRADLEY: We're here to discuss the
5 application 18227, levee improvement project, Three Rivers
6 Levee Improvement Authority's levee improvement project,
7 Phase 4, Segment 2, Feather River setback levee, in
8 Reclamation District 784, Yuba County.

9 --o0o--

10 CHIEF ENGINEER BRADLEY: The action that you are
11 going to be asked to consider is delegation of the
12 authority of delegating the authority to the general
13 manager to send a letter to the Corps of Engineers
14 requesting approval to alter a federal flood control
15 project under section -- under Title 33, USC -- United
16 States Code Section 408.

17 --o0o--

18 CHIEF ENGINEER BRADLEY: Since we do have some new
19 members, I thought I would go over the entire project a
20 little bit, give a little bit of background on that.

21 This project started in, I believe, 2004 with this
22 little red segment up here. There was some work on the
23 Yuba River levee. The next -- that was Phase 1.

24 Phase 2 consisted of work along the interceptor
25 canal, which is right here, a little bit of the Bear

1 River, again, some slight work on the Yuba River up here,
2 on the levee, along the Yuba River.

3 Phase 3 was this creation of the setback levee
4 along the Bear River. The old levee went right along
5 here, and a setback levee in here, it's about 10,000 feet,
6 or about 2 miles long.

7 Phase 4 is the -- most of that is the Feather
8 River work. The original proposal by Three Rivers Levee
9 Improvement Authority was to actually fix in place the
10 entire levee here, all the way along here. When money
11 became available under bond, under the bond fund, a
12 setback was deemed to be actually a much better fix. It
13 was just extremely expensive. Three Rivers originally did
14 not have the money for that, and without the bond money
15 they would still not be able to do that.

16 So the fix for Phase 2, which is this reach in
17 here, is setting back.

18 Phase 1 consisted of construction of slurry walls
19 and some berms and so forth, seepage wells, and same up
20 here, in Segment 3. And then there's work along the Yuba
21 River that would be done on that.

22 --o0o--

23 CHIEF ENGINEER BRADLEY: Here again, here's the
24 existing levee in the dark blue, all the way along here.
25 This part has already been constructed. It's the setback.

1 The Feather River work has been divided into three
2 segments -- the lower segment, Segment 1, Segment 2, and
3 then Segment 3. Segment 2 is the setback levee. Segment
4 1 has been approved by a permit, and Segment 3 by a
5 permit. Segment 1 will not be done until next year.
6 Segment 3 is partially done this year. They will be
7 buttoning it up. You heard about the collapse of the
8 slurry wall that happened a couple of weeks ago. They are
9 going to put a seepage berm on the -- a stability berm on
10 the backside of that, and then essentially button up the
11 work for this year.

12 Flood season, November 1, is rapidly approaching.

13 --o0o--

14 CHIEF ENGINEER BRADLEY: Here's a little bit
15 closer view of the action we're working on today. The red
16 lines out here are the existing levees. This is the right
17 bank or west levee. This is the left bank or east levee,
18 existing. This is where the setback is going to start.
19 This is essentially Star Bend right in this area, and it
20 will go up here to just south of where Shanghai Bend is.
21 So it's about 5.7 miles, I believe.

22 The existing levee is about 6.1 or .2 miles. So
23 it's a little bit shorter because you are taking out some
24 of the curve.

25 MEMBER BROWN: Is the existing levee going to

1 be -- is the existing levee going to be left in place or
2 is it removed?

3 CHIEF ENGINEER BRADLEY: It will eventually be
4 removed. The overall process will be that they construct
5 this levee. The Corps accepts it as a federal project
6 levee and then the existing federal project levee can be
7 removed or cut. I don't believe they are entirely
8 removing it. I believe they are going to be cutting parts
9 of it. But it will be a noneffective levee after that.
10 Until, right -- right now, building that levee does not
11 make it a federal project levee. We need the Corps to
12 accept it as a federal project levee. And then we can
13 remove the existing levee.

14 The Bear River setback levee that we talked
15 about --

16 --o0o--

17 CHIEF ENGINEER BRADLEY: Right here, this has
18 already been constructed. The original levee went right
19 along this area, in here. This levee has a -- received
20 permission from the Board and from the Corps to degrade
21 this levee, use that material to build this setback levee.

22 This levee has been certified by the Corps but has
23 not been accepted as a project levee. So in the federal
24 flood control project, this is, to my notion, a hole,
25 until the Corps tells us it's been incorporated in the O&M

1 manuals and accepted as a project levee.

2 SECRETARY DOHERTY: Steve, why hasn't it been
3 accepted?

4 CHIEF ENGINEER BRADLEY: Well, part of the -- part
5 of what was required was to send over the final plans or
6 the as-builts, as it was built, the drawings that show any
7 changes of major construction and so forth, and modify the
8 O&M manual changes. Those were received in very late
9 June. I believe Jay was on vacation at the beginning of
10 July. I sent a letter over immediately. So they received
11 a letter with that submittal on July 3rd. We just haven't
12 heard. It's probably -- you know, it's a process. They
13 are going to take their time and look at everything that
14 went on.

15 They have actually certified it for FEMA level
16 protection, but they have not yet specifically told us
17 that it is part of the federal project. And we haven't
18 received modified O&M manuals yet.

19 I am hoping that comes in at any time. But it's
20 already been essentially two years since this has been
21 done. So I am a little leary of doing this. It's one
22 thing to do a very short reach here, of a couple miles.
23 But to do several miles, you know, one, you can't degrade
24 that levee and build a new levee. It can't be done. It's
25 probably not going to be done in one season. Maybe two,

1 but probably not.

2 And so it's not exactly a good idea for the Board
3 to do that. And you always have a choice of doing
4 those -- making those decisions, weighing the pros and
5 cons. But it's not a good thing to tear out an existing
6 federal levee and just place it with what is essentially a
7 local levee. Although, in the case of the Bear River
8 levee, hopefully a much better levee.

9 --o0o--

10 CHIEF ENGINEER BRADLEY: There are issues here
11 with the action that's going to be taken. There are still
12 lots of questions on the technical analyses that have been
13 submitted. I have submitted questions on the hydraulics.
14 The Corps has submitted questions on the hydraulics, and
15 others. There's levee alignment -- the levee alignment
16 has not been set. We don't know exactly where it is. We
17 know it's close, but we don't know where. There's been a
18 myriad of questions on the seepage cutoff wall, pump
19 station number 3 that will be removed and replaced, and
20 the current level is pretty much in the design drawings.

21 --o0o--

22 CHIEF ENGINEER BRADLEY: Under the technical
23 analysis, the underseepage, the Corps had questions, and
24 DWR, on how they computed the underseepage. They are
25 asking that the water surface elevation be considered at

1 the top of the levee. It was not done. It was done at
2 the design floodplain level, and not at the top of the
3 levee.

4 And so the Corps and DWR asked that the
5 underseepage calculations be redone, assuming that the
6 water is up at the very top of the levee and not at the
7 design.

8 And then the Corps had questions on the
9 assumptions that were used in the analysis. Since you
10 know about as much as geotechnical analysis as I do, I'm
11 not going to go into all that stuff. We do have Corps
12 comment. If you want, I can always forward those to you.

13 Stability. Again, the stability analysis, the
14 Corps and DWR both asked again that that be recomputed
15 with the water surface elevation assumed at the top of the
16 levee and not lower.

17 Settlement. The settlement analysis that was
18 computed, there is significant settlement on parts of
19 this. On the Bear River levee, there was 30 inches of
20 settlement expected on that. That's two and a half feet
21 of settlement. That's a lot of settlement.

22 I haven't seen the computations for this. But the
23 real problem, what they have not addressed to staff's
24 concern or to DWR or the Corps is that you have different
25 alluviums. You have what they call a recent alluvium and

1 the Modesto formation. They are very similar, but one's
2 much more consolidated than the other. And when you go
3 over one to the other, they have different settlement
4 rates, so the levee will settle at different rates over
5 where you make these transitions from one thing to the
6 other. And they have not addressed that issue on the
7 differential settlement.

8 And they have not provided us with the
9 preconstruction design. But the top of levee is going to
10 be when they construct it, not when it's going to be after
11 the settlement, but what it's going to be -- you know,
12 when they construct it and when it's right when they
13 finish the construction, before the settlement takes
14 place.

15 Then as I said, the Corps and the Board, myself
16 especially, have asked many questions on the hydraulic
17 analysis that have not yet been answered. They did send
18 over 44 pages of some comments that were received. And I
19 received them probably Monday or Tuesday, I guess. I'm
20 not quite sure when. I have not gone through all of
21 those. I did take a quick look.

22 My comments were not in there. But it looked like
23 they did have some Corps comments in there from Ethan
24 Thompson, the Corps' hydraulic reviewer.

25 --o0o--

1 CHIEF ENGINEER BRADLEY: Unresolved alignment
2 reaches. There's three places along the alignment where
3 there's been considerable discussion. You heard Mr. Rice
4 earlier discuss his property and the proposed move. But
5 there's also a couple of others where the Corps has been
6 very adamant about, at least on one of them, very adamant
7 about the alignment. And then the other one is the
8 uncertainty of the alignment.

9 --o0o--

10 CHIEF ENGINEER BRADLEY: Here again, the south is
11 to the left on this, the north to the right. This is the
12 existing levee, the red line. The existing right bank
13 levee over here. And the setback levee. What you see in
14 the yellow is what they call the recent alluvium. The
15 "QM" out here is the Modesto formation. Like I said, the
16 Modesto formation is a much more solid formation than is
17 the recent alluvium. Very similar in the type of
18 material. It's just the consolidation and the age of the
19 material.

20 But right down in here, you can see where it's
21 gone over the recent alluvium. The reason that they put
22 this alignment -- there are houses out here. There really
23 wasn't a good way to avoid this area.

24 But the first area that I am going to talk about
25 is right here. And you can see where the line goes right

1 across the thing. This is what I call the southern
2 alignment. This is the one the Corps has been pushing on
3 for some time to have it moved off of that and on to the
4 Modesto formation. So they have asked for some studies to
5 justify this alignment. To my knowledge, this still has
6 not been resolved. So that's the first one.

7 The second one is right here. This is Mr. Rice's
8 property. And the problem with that is, at least from the
9 state and federal view is, you are taking your alignment
10 the way it is now and actually moving it even further to
11 the west, about 45 feet. In the recent proposal, that is
12 the compromise that Mr. Rice and Three Rivers has reached.
13 But it has not been bought off by either the state or the
14 federal government.

15 And as you move further to the east, most of this
16 property stays on the Modesto formation -- or the R
17 formation, which is a little bit more stable formation.
18 But up in this very area, where you are going from the
19 better formation to the recent alluvium, the further you
20 move it out, you do pick up some more of the recent
21 alluvium by moving this 45 feet.

22 And I believe Mr. Shapiro said at the last meeting
23 that that was about an additional six feet of that. But
24 again, right now, they are collecting data on this. You
25 heard Mr. Brunner say they were going to do some more

1 borings. They were still collecting data to try to
2 determine what the best alignment is.

3 So that hasn't been resolved yet as to whether
4 that agreement to move 45 feet to the west is justified.

5 Third one is this big yellow area here. And the
6 original reason for moving over here was that there was a
7 pear processing plant somewhere in this area, I think
8 right in here. And so they were trying to avoid that.
9 But they really don't have to because the pear processing
10 plant was associated with the property, the biggest chunk
11 of property, by the Naumes, that they are going to be
12 buying for this setback levee. And so that pear
13 processing plant was only used by the Naumes to process
14 their pears. Once you buy the property, you no longer
15 need the processing plant.

16 So DWR has asked Three Rivers to provide an
17 economic justification that this alignment is it, and a
18 technical justification. And I believe they are in the
19 process of doing that.

20 So right now, we don't know whether that -- this
21 line is going to be over here a little bit more, if
22 there's going to be additional properties affected or
23 anything.

24 So right at the moment, we don't know what this
25 alignment is, the final alignment.

1 --o0o--

2 CHIEF ENGINEER BRADLEY: Cutoff wall design.

3 Right at these two locations where the setback levee ties
4 into where the existing levee is, there are cutoff walls
5 that will be installed as part of Segment 1 and part of
6 Segment 3.

7 And when you have -- their proposal is to bring
8 these walls in and just kind of, not side by side, but
9 just run them in, parallel. The southern one, I believe,
10 is a hundred foot apart. I believe the northern one is 50
11 foot apart. What we've done in the past -- this is not
12 any kind of established technology. We did this on the
13 Freeport pump station for the Mokelumne River diversion.

14 They were actually lapsed, side by side, for a
15 hundred feet so that there was no gap in there. And there
16 was a long overlap that was adjacent to each other and
17 that's what we've kind of asked for this time. That has
18 not been resolved as to what will be done there. The
19 Corps is concerned about it. DWR is concerned about it,
20 as am I.

21 So this has not been resolved as to what the
22 tie-ins will be.

23 --o0o--

24 CHIEF ENGINEER BRADLEY: Also, the slurry wall
25 through this Phase 2 or Segment 2 reach is not continuous.

1 There's about 8,000 foot that has not -- does not contain
2 seepage cutoff wall. DWR has asked them to be reviewed,
3 more borings taken to make sure that that seepage wall is
4 where it should be.

5 So very -- to me, these are -- at least on the
6 technical basis, these are very valid concerns of
7 proceeding with this project at the moment.

8 --o0o--

9 CHIEF ENGINEER BRADLEY: Gravity drain. There's a
10 pump station about halfway up or two-thirds of the way up,
11 something like that, to pump local drainage from the
12 inside to the outside. It's already existing. It exists
13 at the existing project levee. That will be removed; a
14 new pump station reconstructed on the landside of the new
15 setback levee.

16 The question here, and this is -- the Corps has
17 really been raising this. In order to reduce the
18 operation and maintenance costs of pumping, they have a
19 gravity drain that runs underneath, through the
20 foundation, below ground surface, through the foundation
21 of the levee, and out into the river so that you can --
22 during summer, spring, when you don't have high water, you
23 just open this up and it drains any drainage right on out
24 to the river. You don't have to pump it.

25 That is -- I think there's about a thousand feet

1 of this, that goes through this, that runs under the levee
2 and through that berm, setback area, all the way up to
3 where the river is now. They haven't addressed the
4 potential differential settlement that occur from the
5 different formations that you are going to go through.
6 That is a fairly large drain.

7 The Corps has real problems with this. They did
8 allow it on pump station six, which is on the Bear River,
9 just before the setback levee, there, was constructed.
10 There's another drain there that they allowed it. But
11 that was one that already had a subsurface drain. The
12 existing pump station does not.

13 And they also did their design of pump station
14 two, which is about -- at the very bottom end where the
15 Bear Levee comes right into the Feather River levee now
16 and backs up when the setback levee comes in. So that was
17 Corps project on their end. And their design allowed the
18 gravity drain to remain because the original pump station
19 had a gravity drain.

20 It does provide a direct connection between water
21 and the inside of RD 784. So it is a direct conduit below
22 the levee and right into the bank. So there is some
23 concern of that.

24 Board regulations actually allow for this. If
25 it's a public entity, what the regs say, pipelines may be

1 installed through a levee, below the designed floodplain,
2 or within the levee foundation, under the following
3 conditions. Now, there's more than this. But I took --
4 this is the first one, and it's really the only one that
5 we're concerned with here.

6 "One or more of the following conditions must
7 apply: The pipeline may be maintained by a public agency
8 with a history of good maintenance, based upon annual
9 maintenance or inspection reports."

10 I think you can make a case for this, at least
11 under our regs. And I think the question will be whether
12 the Corps of Engineers allows this. This has not been
13 determined as to whether that would be allowed. Depends
14 on -- you know, you're talking about public agency with a
15 history of good maintenance. And RD 784 have pretty good
16 maintenance history. I don't know if they would be the
17 one maintaining this or not. Probably. It would probably
18 be a facility. It wouldn't be Three Rivers and it
19 probably wouldn't be Yuba County.

20 So anyway, it's not something I'm particularly
21 fond of. I mean, just thinking about having a direct
22 connection from the flood system to the interior of the
23 levee doesn't make a lot of sense. We have allotted the
24 other two. I am kind of wishy-washy on this one, I must
25 say. I'm not dead set against it. But I think, you know,

1 it does need some consideration. It does need whatever
2 the Corps is going to determine on this.

3 --o0o--

4 CHIEF ENGINEER BRADLEY: Design submittal. Design
5 submittal is not yet complete. Give about, give or take,
6 a 60 percent level. Some things are more. Some things
7 are less. But generally, the overall design is only about
8 60 percent.

9 Missing technical information. I talked about
10 some of the technical analyses. There's still data
11 gathering. There's been questions on the borrowed
12 material and how suitable that is.

13 The alignment. There's quite a bit of technical
14 information that's still missing.

15 Design data. They are still collecting the data
16 they are going to use for the design. That will affect
17 the alignment. That will affect the location of the
18 slurry -- or the seepage walls.

19 So that's it.

20 The actual project is unknown. We know it's
21 fairly close, but we don't know. I cannot give you any
22 answers on this, on a technical basis, because it is not
23 known as to exactly where it is. So for me, there's no
24 recommendation on the engineering of it.

25 Part of this, even if we proceed somewhere along

1 the line before we go to construction we're going to
2 request that a hundred percent design plans be submitted
3 to us. That's what's actually required. We do write
4 permits, on occasion, for that. You can actually do it at
5 60 percent, if it was a fairly well laid out project that
6 wasn't -- didn't have a lot of variables in it. Usually,
7 we do it at the 90 to 100 percent level. A lot of
8 permits, when they are this complex, just request them to
9 not -- they can't proceed until they do submit the final
10 plans to us.

11 --o0o--

12 CHIEF ENGINEER BRADLEY: Again, just to repeat,
13 the action the Board is going to be taking will be
14 consider delegating the authority to the general manager
15 to send a letter to the Corps of Engineers requesting
16 approval to alter the federal flood control project under
17 33 U.S. Code, Section 408.

18 This is a federal project levee. The Corps has
19 pretty much said we could not -- we had originally planned
20 on proceeding with this as just an application to build a
21 backup levee. When that was built, we would proceed with
22 the 408 action and request the Corps of Engineers to
23 accept that as a project levee and then ask permission to
24 degrade the federal levee.

25 The Corps has essentially said you cannot separate

1 those actions, so you have to come forward now with a 408
2 request. That came in about, what, one or two days before
3 the agenda was finalized. And so we changed it, the way
4 this was set up, and asked for the authority to be
5 delegated to general manager to send this 408 letter.
6 It's not ready to send out. We don't know what the
7 project is. The question is whether you should send that,
8 delegate that authority, when you don't know what the
9 project is.

10 --o0o--

11 CHIEF ENGINEER BRADLEY: The recommendation, staff
12 recommendation -- maybe I should say, the chief engineer's
13 recommendation is not to delegate the authority to the
14 general manager to send this.

15 The project has not been defined, completely
16 defined. The impacts of the project are therefore
17 unknown. We don't know if there are going to be other
18 landowners affected. We don't know if anything else is
19 going to be affected. The issues I discussed earlier had
20 not been resolved. There's a significant amount of these
21 that have not been resolved.

22 Systemwide impacts have not been evaluated. Now,
23 they did a CEQA analysis. They did it really on their
24 project. The Board is really charged with the flood
25 control project as a whole. And that CEQA analysis may

1 not be adequate to analyze those impacts. It certainly
2 didn't look at what was going to happen when there's a
3 little setback on the opposite side of the river that
4 would be going forward under the bond implementation
5 money, along with this one. That was not considered.
6 Haven't looked at it as a systematic change or as a change
7 to the entire system. So I am not sure. In the past, we
8 have accepted that the locals' CEQA document --

9 MEMBER SUAREZ: I'm sorry, Steve. I hate to
10 interrupt you. But are you saying that you need a CEQA
11 documents for our position to delegate to the general
12 manager, the writing on the letter?

13 CHIEF ENGINEER BRADLEY: Well, you're going to be
14 asking the Corps to allow you to modify the project X.
15 It's specific. It's not just general, a general
16 modification. It's going to be doing X. "X" hasn't been
17 defined yet.

18 And I think when you do that, when you make the
19 decision, the CEQA document that Three Rivers has prepared
20 may or may not be sufficient for that action when you
21 actually issue the permit.

22 MEMBER SUAREZ: Right.

23 CHIEF ENGINEER BRADLEY: But you are asking the
24 Corps to consider modifying a project. And I think you
25 should know what that project is and all the consequences

1 of that project.

2 MEMBER SUAREZ: But I just want to clarify that
3 the CEQA document -- I just want to clarify that the CEQA
4 document we make is for a decision to allow dirt to move,
5 not to a decision just dealing with asking the Corps to
6 look over.

7 CHIEF ENGINEER BRADLEY: I suspect that that is
8 correct. I am just pointing out that there are other
9 issues here.

10 MEMBER RIE: Is the CEQA document approved?

11 CHIEF ENGINEER BRADLEY: It is for their project
12 only. You are going to be making a decision on Sacramento
13 River Flood Control Project. The Board does not know what
14 the project is at the moment. I don't know what the
15 project is at the moment. That will be recommended to the
16 Corps. If you delegate this authority to the general
17 manager, you have left that to him to decide what the
18 project will be. And the ultimate -- there are certain
19 things that the Board is probably required to decide.
20 That's not my area. Those are more in the legal realm as
21 to what they can decide. I believe you can delegate as
22 much as you want. But I don't know if that's true or not.

23 And again, the Board must consider the systemwide
24 impact actions, or impacts of this action. You are going
25 to be modifying the system, not just Three Rivers Levee

1 Improvement actions.

2 One problem is, you may be setting a precedent.

3 There are other projects out there that may want -- I
4 mean, the reason this is being pushed is because the
5 recent legislation is changing the way the Board will
6 function. And on January 1st, the way we've been
7 functioning here is going to change. It's going to
8 require regulations in order to make the -- to function.
9 That's going to take some time. Everybody is very worried
10 about what's going to happen. I mean, not only the
11 applicants, but your staff and maybe even you as members
12 of the Board. So that's one reason this is being moved
13 forward. And I certainly sympathize with this.

14 In my own opinion, the setback levee here is the
15 way that we should be looking at flood control in the
16 future. My problem with it is, I don't think it's ready
17 for those kinds of decisions yet. But there are other
18 agencies. SAFCA is very likely to come forward and is
19 going to be asking for some 408 letters. LD3 on the other
20 side of the river is going to want to be getting their
21 project done before all these regulations kick in and
22 we're kind of locked down for some period of time.

23 So you may be setting a precedent for what is
24 required when the Board makes certain decisions.

25 Anyway, that's my presentation. If you have any

1 questions, I am sure there's going to be some other
2 speakers here. I'm going to be very popular today, I must
3 admit.

4 PRESIDENT CARTER: Are there any specific
5 questions for Mr. Bradley?

6 I do remind the Board that we have two more
7 members of staff that will be presenting information to
8 the Board as well on this.

9 MEMBER SUAREZ: I have some, but I can defer to
10 Mr. Brown.

11 PRESIDENT CARTER: Mr. Brown?

12 MEMBER BROWN: Thank you, Mr. Chairman.

13 Steve, what's your singular most concern on this?
14 I understand there's lots of small -- what I would
15 consider, smaller issues. But what's -- what's your major
16 concern?

17 CHIEF ENGINEER BRADLEY: I think that we don't
18 know what the project is. You are making -- you are
19 making a decision to ask the Corps -- I mean, what the 408
20 letter does is ask the Corps to modify the -- allow you to
21 alter the federal project.

22 MEMBER BROWN: Okay.

23 CHIEF ENGINEER BRADLEY: And that is a specific
24 thing. It's not just sort of a general thing. You are
25 asking them to do it, a very specific thing. That is, set

1 this levee back here. Not just generally set the levee
2 back, but to set it back here.

3 MEMBER BROWN: Okay. You are talking about moving
4 the levee for geotechnical reasons. Don't you have a
5 pretty good idea where that levee is going to end up in a
6 reasonable distance in the change?

7 CHIEF ENGINEER BRADLEY: I think for most of it,
8 we're pretty sure that that northern area, the third area
9 I talked about, that could be a fairly significant shift.
10 But again, the Board is making a decision on -- the Board
11 usually makes a decision -- it is going to be the permit
12 issue, and it's going to be this action. It's not just
13 generally an action. This is this action, whatever that
14 action is. And it will be this alignment. When I write
15 the permit, it usually ties it to the submitted drawings.
16 I couldn't write a permit right now because the drawings
17 aren't sufficient. But it's actually a yes or no on a
18 specific item.

19 MEMBER BROWN: Thank you, Mr. Chairman.

20 PRESIDENT CARTER: Ms. Suarez?

21 MEMBER SUAREZ: I just want to make sure I
22 understand the nature of the decision we're being asked to
23 make today. So if you can just be as clear as possible,
24 what is the decision that we're being asked to make today?

25 CHIEF ENGINEER BRADLEY: A 408 letter -- they are

1 modifying the federal project by creating a setback levee.
2 That requires the permission of the Corps of Engineers.
3 And in order to do that, they have authority under United
4 States Code Section 408 to make a decision as to whether
5 to allow that to happen. That authority resides with the
6 secretary of the Army. That has been delegated as well to
7 the chief of engineers at the moment, with the ability to
8 re-delegate that lower, to a division or a district. That
9 has not been done. So right now, it would go to the chief
10 of engineers for a decision.

11 What your decision is, is to whether to delegate
12 the writing of that letter to the general manager.

13 MEMBER SUAREZ: What would that letter say,
14 roughly, in like a sentence?

15 CHIEF ENGINEER BRADLEY: I have got the SAFCA
16 letter, here, if you would like me to read that.

17 It says -- do you want me to read that?

18 MEMBER SUAREZ: Quickly. What would the letter
19 say?

20 CHIEF ENGINEER BRADLEY: It asks, "Reclamation
21 Board is requesting determination by the U.S. Army Corps
22 of Engineers regarding authorization of the project of a
23 portion of the Sacramento River Flood Control Project."
24 For SAFCA, they actually issued the permit. But it says,
25 "For construction of a seepage wall within the south

1 levee. The Board has determined that the project is not
2 injurious to the public."

3 I am not sure you can make that determination yet
4 because the project is not yet defined.

5 MEMBER SUAREZ: Could we send that letter without
6 that message?

7 CHIEF ENGINEER BRADLEY: Yeah, you could. This is
8 a Board decision as to whether you wanted to do this or
9 not. I am saying that the project is not defined. The
10 Board is really making decisions on a specific project
11 without knowing what the specifics are.

12 MEMBER SUAREZ: I have just one more question. If
13 we send the letter, are we legally committed to grant a
14 go-ahead later on?

15 LEGAL COUNSEL MORGAN: Let me just try to answer
16 any of the legal questions all at once, if I can. I
17 just -- to put this in some perspective, the normal path
18 that we go down when we're not altering a project, in any
19 way, is to issue a permit. And we consult with the Corps
20 of Engineers. And they review it at district level
21 pursuant to their regulations.

22 For projects that alter a plan of flood control,
23 they are relying upon this code section. It's actually --
24 the full citation, 33 USC 408. And there are no
25 regulations for that. So we have been relying upon

1 guidance from the Corps that is not in the form of
2 regulations on how to administer that.

3 The Corps takes a view of 408 that when any
4 partner with the Corps makes a request for 408 -- and I
5 don't actually know if anyone decides -- if the state of
6 California has made those requests before. But I think
7 indicated to us in meetings that they view that as the
8 local agencies' the nonfederal partners', endorsement of
9 the project.

10 However, we don't have regulations that say that
11 that's what we're doing, and they don't have regulations
12 requiring it to be so.

13 So it's really a two-step process for the state.
14 And my understanding -- Jim Sandners is here. And he can
15 come up and fix all my misstatements of federal law.

16 But my understanding is that the Corps views the
17 408 approval process as triggering NEPA. That's a federal
18 action, but it's not a CEQA action for the state because
19 it doesn't commit the state to do anything. It's a
20 request for the federal government to give approval.

21 But what I think -- and I will let Jim talk to
22 this from the Corps' perspective. What I think the Corps
23 will require from the applicant will be the level of
24 detail that they would have required to review a permit
25 request from the Board under the regulations, and the

1 difference being that it will go to headquarters, rather
2 than just to the district level, for final approval. And
3 ultimately, it will come back with not just, we don't have
4 any objection to this project, but we don't have any
5 objection to the modification. We actually -- we're okay
6 with the modifications to the project.

7 What the Board will need to include in the
8 letter -- I'm not sure -- I don't recall from the latest
9 Corps guidance whether or not the Board has to make a
10 determination that it's not injurious to the plan of flood
11 control. I believe that's something that the Corps will
12 make a determination about.

13 What the Board will have to do is agree that,
14 ultimately, if the project is built, it will be accepted
15 by the state as a part of the new plan of flood control,
16 and that the state will then hold the federal government
17 harmless, as it did with the original plan of flood
18 control.

19 But you get two bites at the apple, because the
20 applicant will have to come back with a more finalized
21 version showing you exactly what the detailed nature of
22 the project is, presumably the same thing that they will
23 send to the Corps as part of the package of material for
24 408 certification.

25 As far as what the Board can do and delegate,

1 you're a public board and there's no permit, ever, that
2 comes before the -- well, very few permits come before the
3 Board for projects beyond the very minor things, where
4 every single detail has been worked out. Usually, the
5 Board will delegate to the general manager authority to
6 issue the permit with any minor changes that are not
7 consistent with the Board's standards in any guidance that
8 the Board has issued.

9 It's a question for you as a public board to
10 decide -- or decide where in the spectrum you feel
11 comfortable or uncomfortable delegating that authority.
12 Do you have enough information or do you not have enough
13 information?

14 MEMBER SUAREZ: We don't have the permit before
15 us.

16 LEGAL COUNSEL MORGAN: I think it's probably a
17 different threshold for a 408 as opposed to a permit.

18 Any other legal questions?

19 MEMBER BROWN: I have a question of you.
20 Endorsement versus approval. I think you have answered
21 the question, but I want to make sure. Obviously, we've
22 endorsed the project. The project's proceeding along with
23 the three phases.

24 But if we go ahead and authorize and request the
25 general manager to make the application for 408, we still

1 have the opportunity, even after that 408 is in process,
2 to approve the final design. Is that not correct?

3 LEGAL COUNSEL MORGAN: Actually, you have the
4 obligation to do that. They will not yet have a permit.

5 MEMBER BROWN: So by requesting the 408, to start
6 the process, does not limit this Board's authority in
7 making changes as appropriate with the project.

8 LEGAL COUNSEL MORGAN: It does not. And the
9 applicant is aware, I'm sure, and bears some risk, that if
10 the Board is unsatisfied with the project as presented to
11 it, and makes substantive changes, that the Corps feels
12 go beyond what is in the 408 approval, they wouldn't
13 reinitiate the 408 review process, I suspect. But again I
14 will let Mr. Sandner from the Corps address that point.

15 MEMBER BROWN: There could be a risk that the
16 applicant would have to be paid.

17 LEGAL COUNSEL MORGAN: Correct.

18 MEMBER BROWN: The letter that you read, there was
19 a paragraph in there that certainly didn't ring true to
20 me. I would like to have that letter read over again and
21 I wouldn't -- wouldn't the application for the 408 permit
22 just simply be a cover letter saying that it requests the
23 process to begin for the 408 without any subsequent
24 details in the letter?

25 LEGAL COUNSEL MORGAN: Some of the details -- I

1 didn't actually hear them in what Mr. Bradley read. But
2 some of the content of the letter is specified by the
3 Corps. And again, I will let Mr. Sandner address what the
4 Corps will require in that letter. But I know the Board
5 has to assure the Corps that it is going to be willing to
6 accept the project and indemnify the Corps in the event
7 the project is built. But of course, the Board has not
8 yet issued a permit, and you can certainly address those
9 concerns at that time.

10 MEMBER RIE: I just wanted to add that we're
11 addressing the letter to the local district commander, and
12 we make the request to the district commander, and then
13 the district will put together the package and forward
14 that on to the South Pacific Division. And then the South
15 Pacific Division will forward a package to headquarters.
16 So a lot of this package is being put together by Corps
17 staff.

18 PRESIDENT CARTER: Any other questions for Mr.
19 Bradley or Mr. Morgan?

20 LEGAL COUNSEL MORGAN: I would like to make sure
21 that the Corps advises you what, at a minimum, has to be
22 included in the letter to make sure -- we did have an
23 issue with the letter going to the Corps that was not
24 satisfactory. And the Board has to revisit that issue.

25 So I want to make sure that we don't miss any of

1 the crucial elements. And if there is a crucial element
2 that's required, and it gives the Board heartburn, we need
3 to know about it.

4 PRESIDENT CARTER: We will do that when we have an
5 opportunity.

6 Mr. Hodgkins?

7 VICE PRESIDENT HODGKINS: This is a question for
8 Mr. Bradley.

9 As you're staff of the Board, we like to have in
10 fact three different groups of engineers reviewing plans
11 prepared by the Corps. What is the process when there is
12 a disagreement between the groups of reviewing engineers?
13 How are these things going to get resolved?

14 CHIEF ENGINEER BRADLEY: Well, the Corps is the
15 big dog in the fight because they actually have to accept
16 the levee in the end, and they have to certify it for
17 FEMA, which is the big question for the locals.

18 So if they aren't going to -- if we can't work it
19 out with them, that's probably what's going to be done.
20 Usually, these things get worked out.

21 VICE PRESIDENT HODGKINS: But sometimes it takes
22 them time and everyone's sitting in their room and sort of
23 laying --

24 CHIEF ENGINEER BRADLEY: Right now I think we're
25 all, give or take a little bit, more or less on the same

1 pages to the uncertainty. It's not anybody's saying that
2 we can't do this. We just don't know what you should be
3 doing at the moment, or whether -- not what, but what has
4 been proposed is what we should be doing.

5 And since the state is putting up the lion's share
6 of the money for this and the Corps has to certify it and
7 accept it as a project levee, they have questions. And
8 you know, \$138 million, 138 and a half, I guess, million
9 dollars of state investment.

10 Ultimately, this is your comfort level with where
11 the project is and delegating that authority to the
12 general manager to finish this up. So that is what the
13 request is.

14 Like I said, this is actually a great project. I
15 just can't tell you on a technical basis what that project
16 is at the moment. I can tell you about what it is. I
17 just cannot tell you what it is.

18 PRESIDENT CARTER: Thank you.

19 SECRETARY DOHERTY: My question is not
20 engineering. Once again, we go back to financing. And I
21 think that somewhere we were told they had to provide
22 audits to the Department of Water Resources. Is that
23 correct?

24 CHIEF ENGINEER BRADLEY: I heard that today for
25 the first time. That is not something I am familiar with

1 at all. I don't know what those laws are for the
2 formation of the district.

3 SECRETARY DOHERTY: And an audit does not consist
4 of a list of assets and liabilities. I think it's a
5 record of where all these millions have gone.

6 And let's say that I am a member of TRLIA. Maybe
7 I am buying a house with some of those funds. I don't
8 know. But unless I saw a complete audit, I wouldn't know
9 that. And this is a concern to me because we've got to be
10 able to complete the project. And just to say, "We have
11 the assets," I think I want to see something more than a
12 list of liabilities and assets.

13 CHIEF ENGINEER BRADLEY: I think you'll have to
14 ask the applicant for that. That's certainly not an
15 engineering issue.

16 SECRETARY DOHERTY: Right. I said it wasn't
17 engineering, but it is a concern. And if we're going to
18 be voting, I think that we have to be aware of all of the
19 assets.

20 PRESIDENT CARTER: Okay. Thank you.

21 Ladies and gentlemen, let's hear from Mr. Punia
22 and then Mr. Swanson. And then we'll invite Mr. Sandner
23 to shed some light on the Corps' perspective.

24 So Mr. Punia.

25 GENERAL MANAGER PUNIA: Good afternoon, President

1 Carter and Board Members.

2 Jay Punia, general manager of the State
3 Reclamation Board.

4 My goal is always that when we make you a
5 recommendation that I as a general manager and Steve as
6 the chief engineer are on a united front. But in this
7 case, I have a slightly different opinion and perspective
8 on this, so that's why I want to address the Board.

9 I represent -- first of all, I agree with Steve's
10 analysis that there are technical issues which still need
11 to be resolved. And I think Steve gave a good overview of
12 what those technical issues are. And I also respect
13 Steve's aptitude for detail and his firm belief that he
14 needs to have all the things before he makes a
15 recommendation to the Board. And as a general manager, I
16 represent that I am glad that Steve is our chief engineer
17 for the Board.

18 But in this particular case, my recommendation is
19 slightly different than Steve's. I think we need to move
20 on, on this project, and request the Army Corps of
21 Engineers to modify, alter this project. And I will
22 explain to you why.

23 From a policy perspective, I acknowledge that from
24 a technical point of view, the issues are still there.
25 But from a policy perspective, I think you have enough

1 information to make the decision so that we can start this
2 408 process. It's a lengthy process. It takes time at
3 the Corps and there are implications if there are delays
4 in this process.

5 Before the construction starts, we have to have
6 the Corps Section 108 approval to get the credit from the
7 Army Corps of Engineers. And the Corps is not going to
8 issue the Section 104 approval until they get the 408
9 request. And so that's a major consequence for the
10 further delay in the approval process in the Army Corps of
11 Engineers.

12 And as Mr. Paul Brunner yesterday explained to you
13 in the tour, and Steve has explained to you, that this is
14 the fourth phase of a large project. And if we don't
15 finish this fourth phase, the whole area is prone to
16 flooding. And it will be really embarrassing for all of
17 us if this area is flooded again.

18 And in mid '90s, I was the Department of Water
19 Resources project engineer working on the levee
20 reconstruction project for strengthening the levees for
21 the Marysville-Yuba City. We had a schedule that we were
22 supposed to strengthen the levee at the Arboga in 1998,
23 and the levee failed in '97. So I think a lot of time and
24 thought comes to my mind. If you pushed it a little bit
25 more and expedite the schedule and working with the Corps,

1 had we repaired it in 1997 or '96, we could have saved the
2 flooding of that area.

3 So keeping that in mind, I think we want to do
4 everything in the power to expedite the schedule. And
5 this is one of the steps which we can take to get the
6 formal process started so that the Corps can take this
7 action and -- so that the project can move forward.

8 And I will give another option to the Board. If
9 you are not comfortable delegating the authority to the
10 general manager, you may delegate this authority to the
11 president of the Board to send this letter so that we will
12 work with the Army Corps of Engineers.

13 When they think that we have all the pieces
14 together, President Ben Carter can sign the letter and
15 send this to the Army Corps of Engineers to get this
16 process under way.

17 Thank you. And I will be glad to answer any
18 questions.

19 PRESIDENT CARTER: Any questions for Mr. Punia?

20 Mr. Brown?

21 MEMBER BROWN: Not a question, but a statement.
22 Should this Board decide to go ahead and send the letter?
23 I would like for us to consider adding Steve's concerns,
24 identifying his concerns properly, but also identifying
25 Jay's reasons for moving ahead of this time, that caveat.

1 I think that was very well said, Jay. I appreciate your
2 comments. And I appreciate you and Steve being able to
3 debate those kinds of issues as staff. That helps us.

4 PRESIDENT CARTER: So you are suggesting that the
5 content of the letter include those comments.

6 MEMBER BROWN: Yeah. I think we should
7 consider and just identify the concern and letting them
8 know that it's there and we will be addressing it. But
9 also more importantly, the timing on this project is
10 critical. I think that overrides any negative activity
11 that we may have on this thing, personally.

12 Very well done, Jay.

13 GENERAL MANAGER PUNIA: Thank you.

14 PRESIDENT CARTER: Any questions for Mr. Punia?

15 Thank you.

16 Mr. Swanson?

17 MR. SWANSON: I think Jay did such a good job of
18 laying out a path forward. I'm not going to say much
19 other than I support what he said. And I think that we
20 all have heard the importance of moving forward in an
21 expeditious manner. So I think to do that, you need to
22 give your staff authority and then hold them responsible.
23 And so I would agree. And I think the Department agrees
24 with the proposal to delegate to the authority so that we
25 can get some parallel process going.

1 We clearly have laid out expectations to our staff
2 that they work with the Rec Board, the Corps of Engineers,
3 and applicant to deal with the technical issues and
4 resolve them. And if there's a disagreement, we want to
5 hear about it. And we will intervene and help come up
6 with the right solution that protects all the parties.

7 And so, you know, I don't want to belabor the
8 issue anymore. But we're supportive of moving forward in
9 the most expeditious manner possible.

10 PRESIDENT CARTER: Thank you.

11 Any questions for Mr. Swanson?

12 MEMBER RIE: Yes. When does this letter need to
13 go out in order for DWR to work with the Corps to make
14 sure that the 104 credit happens?

15 MR. SWANSON: It's probably a question more for
16 the Corps and it's a question of, you know, what
17 specifically are they going to need? And then the
18 question back to the applicant, when will they have their
19 design completely nailed down to the Corps' satisfaction?

20 So I am probably not the one -- the Department is
21 probably not in the driver's seat on this one. So it's
22 probably a question for the Corps of Engineers and the
23 applicant.

24 MEMBER RIE: Okay.

25 PRESIDENT CARTER: Mr. Sandner, good afternoon.

1 Thank you for coming.

2 MR. SANDNER: Thank you for inviting me. Jim
3 Sandner, Sacramento District, Corps of Engineers.

4 Good afternoon, members of the Board.

5 The issue that you are struggling with is not
6 necessarily crucial in the Corps of Engineers
7 administration of 33 USC 408. As Scott mentioned, there
8 are some specific things that the Corps of Engineers
9 requires from the federal sponsor when they request an
10 alteration of the federal project. And those things
11 specifically need to be in the letter that the Board
12 sends.

13 We need to understand that the sponsor will accept
14 the improvements into the federal system, that they will
15 continue to operate and maintain those new improvements,
16 that those improvements will not be injurious to the
17 project, to the usefulness of the project. And also, that
18 the Reclamation Board as the sponsor will hold the federal
19 government harmless for those works and the construction
20 of those works. That's what we look for in the initial
21 letter.

22 I would suggest that if you send a letter for a
23 408 request at this time and the materials that the
24 applicant sends along with those are not sufficient for us
25 to fully review the project and make a recommendation to

1 the chief of engineers for approval under 408, that we
2 would just continue to have coordination between the
3 Reclamation Board and the applicant to continue to work
4 and provide the kind of technical documents that we would
5 need to make that recommendation.

6 And I will give you an example. Under the Corps'
7 regulatory program, many times we have applicants that
8 come in and request a regulatory or Section 10 permit
9 under the Clean Water Act. And many times, as we review
10 those documents, we discover that all the information
11 isn't there. So we send a letter back to the applicant or
12 make a call to the applicant saying that we need more
13 information. The question here is, if we get a 408
14 request from the Reclamation Board, we feel like we can
15 continue to ask for any information that we don't have
16 with that initial request.

17 The Reclamation Board just needs to feel
18 comfortable with their decision to make the request at
19 this time. If they feel that they don't really have all
20 the information at hand to actually know, in their minds,
21 whether or not, you know, they are going to be able to
22 accept these improvements and hold the federal government
23 harmless.

24 I would say also, if you send a letter and you
25 decide that you don't want to hold the federal government

1 harmless and you are not happy with the project, there is
2 nothing that would stop you from sending another letter to
3 the Corps of Engineers and withdrawing your request to
4 alter the federal project.

5 So I -- I don't see a real problem here. All I
6 see is that the Reclamation Board needs to be comfortable
7 with sending the request now. And Steve has kind of
8 outlined some things for you to consider and think about
9 as you send that letter. And whether you send it from the
10 Board or you delegate it to Jay or you delegate it to Ben,
11 it is not an issue for the Corps of Engineers.

12 And I am glad to answer any questions that you
13 might have.

14 PRESIDENT CARTER: Any questions for Mr. Sandner?

15 VICE PRESIDENT HODGKINS: Jim, I wanted to try and
16 talk about this as it would be in comparison to the more
17 traditional past experience of the feasibility study.

18 So in effect, when the Corps and Reclamation Board
19 and the local sponsor move forward with the feasibility
20 study, they conclude the feasibility study. They make a
21 decision whether they are prepared to support that
22 project. And if they are, the Rec Board provides the
23 assurances. I think the local sponsor has to provide the
24 assurances to the state that are similar. And we send it
25 all off to congress and ask them to approve the project.

1 Now, some of the issues that we're dealing with
2 here, in Steve's comments, which are legitimate and
3 serious technical issues, haven't even really been found
4 at the point we send the feasibility report back to
5 congress, because we don't go out and do, typically,
6 detailed soils work and all of those kinds of things at
7 the feasibility level.

8 So I mean -- I think you have to understand that
9 in the process that we have gone through in the past,
10 while we may think we know what the project is, because
11 nobody tells us how uncertain it is -- you know, I'm
12 familiar with projects where slurry walls were described
13 in the authorizing document as being 30 feet deep and
14 ended up being 80 feet deep.

15 And the authorizing documents are going to leave
16 gaps. And the final project didn't leave gaps where there
17 are soils across the project levee.

18 So I guess all I am trying to say for the rest of
19 the Board here is while -- because we're in the process of
20 designing the project, specifically in trying to move
21 forward with it and get the money, we don't know exactly
22 at this point what the final design is going to be. But
23 in projects that follow a similar process that we've done
24 in the past, when we provide the same assurances we're
25 providing to the Corps in this letter, we don't know any

1 more about the project, and a lot of times a lot less
2 about the details of the project than we do here. And we
3 still go ahead and do it.

4 And Steve, would you disagree with that?

5 CHIEF ENGINEER BRADLEY: There are really two
6 different processes. One is a Rec Board project where you
7 are actually the nonfederal partner on a project and you
8 proceed through a very defined set of issues. The Corps
9 does a reconnaissance level study. If it turns out to be
10 a federal interest there, then they will proceed with a
11 feasibility study if they can get a nonfederal partner.
12 So the Board will generally agree to be the nonfederal
13 partner responsible for, I think, half the costs, 50/50
14 deal. They pay the Corps. The Corps pays for all of
15 the -- for all the reconnaissance, 100 percent
16 reconnaissance.

17 Yet the feasibility, if it turns out like it will
18 be a feasible project, then they will proceed further down
19 the line. They will develop agreements, your cooperation
20 agreement, your project cooperation agreement, your local
21 project cooperation agreement, to proceed along that.
22 That is your design.

23 Feasible -- this is not a feasibility study. This
24 is a design. And it is there and you are approving a
25 design or not approving a design.

1 The question is, right now -- that will be done
2 essentially when you issue the permit. The question now
3 is whether you are comfortable and have enough knowledge
4 to ask or to delegate that authority to somebody else to
5 send a letter to ask the Corps to modify the project in a
6 specific way.

7 So this is not a study. It is a defined project.

8 VICE PRESIDENT HODGKINS: I don't think it is.

9 CHIEF ENGINEER BRADLEY: It is now.

10 VICE PRESIDENT HODGKINS: And it won't be until
11 the plans and inspections are completed and are signed off
12 by DWR.

13 CHIEF ENGINEER BRADLEY: We don't need DWR to sign
14 off on it. I want their justification before I move
15 forward because I think as a state agency that's
16 responsible for the permitting of this project, we want to
17 make sure that DWR is happy with it since they are putting
18 up the money. Don't necessarily need DWR's. They just
19 may not -- you could approve a project they may not fund.

20 VICE PRESIDENT HODGKINS: Okay. Okay.

21 MEMBER RIE: I have a question about the 104
22 permit letter.

23 Several months ago we were struggling with this
24 same project in terms of forwarding the 104 credit letter
25 to the Corps. And we knew a lot less back then when we

1 approved that letter. So at the time, that letter was
2 critical to move forward so that the 104 credit could be
3 issued. I don't recall what it is, if it's before award
4 of the contract or before construction. But in any case,
5 seems like we've lost several months in there with the 104
6 credit letter being approved, because now the Corps wants
7 the Rec Board to initiate the 408 requests before they
8 will move forward with the 104 credit.

9 So how much time are we playing with here? Should
10 we send this letter immediately because we're running out
11 of time for the 104 credit?

12 MR. SANDNER: You're talking about a very complex
13 and kind of complicated amalgamation of a number of
14 different authorities, federal authorities associated with
15 this project. On the one hand, you're asking to alter it.
16 On the other hand, you're asking to get credit for that
17 alteration in the future, if that particular alteration is
18 the selected alternative for a study that's currently
19 underway.

20 The 104 process has become more difficult to work
21 through because the Corps of Engineers has made a
22 determination that if you are actually altering a project
23 that already exists and is part of the federal system,
24 that you have got to have a 408 permit signed before you
25 start doing that work. And of course, the 104 credit, you

1 can't have that approval prior to starting construction or
2 award -- or award of the contract for construction.

3 So again, I do not see that whether you ask for
4 the 408 permit at this time is a critical issue with
5 respect to whether -- you know, every single thing about
6 the project or not, because it's going to have to go
7 through a fairly significant review process, both by the
8 staff of the Rec Board and the Corps of Engineers.

9 Mr. Hodgkins' analogy of a feasibility study is
10 not exactly the same as what's happening here. But
11 aspects of that could be applied to it in that as you go
12 through any process, you come to particular milestones in
13 the way you are getting to the end product or end of your
14 construction.

15 And if you send in a request for the 408 permit
16 today, and we don't know everything about the project,
17 we're going to continue to work with the Rec Board and the
18 applicant to acquire all that information, so that once
19 all the information is available and all the analysis has
20 been done, then the Corps of Engineers can make a
21 recommendation on your 408 permit request. You know,
22 we'll work through that.

23 MEMBER RIE: Will the chief of engineers -- let's
24 say, while the chief of engineers is reviewing the 408
25 request, can they still issue the 104 credit so that that

1 happens before the award of the contract?

2 MR. SANDNER: I know that those things have to
3 happen exactly simultaneously. All I know is that to get
4 104 credit, you can't have awarded a contract for
5 construction. You have to have the 104 letter signed
6 first. And what our headquarters is requiring is that if
7 you are altering a project, you need to have a 408 permit
8 approved before you start construction as well.

9 So again, you're not going to be able to build the
10 project and then get 408 credit after you build it. You
11 have got to have that permit in hand first or that
12 approval in hand before you start construction or award
13 construction.

14 PRESIDENT CARTER: Thank you.

15 MEMBER BURROUGHS: Mr. President?

16 PRESIDENT CARTER: Yes.

17 MEMBER BURROUGHS: I have a couple questions. You
18 mentioned that the process is lengthy and can take some
19 time. How much time on average -- what's the shortest
20 amount of time that this approval could get through, and
21 what's the longest?

22 MR. SANDNER: If the alteration is significant and
23 the impacts are broad and far reaching, you may need to
24 complete an environmental impact statement which could
25 take, you know, probably at a minimum, 18 months to get

1 that kind of a document completed, if you are just
2 starting from scratch.

3 This particular project has much of the
4 environmental documentation already completed because
5 they've been in the GRR process. They've done much of
6 their other work already.

7 If the alteration is not a very significant set of
8 impacts, it could be handled with an environmental
9 assessment, which takes much less time. You may also have
10 endangered species issues with your alteration. There are
11 specific time frames that the Fish and Wildlife Service or
12 National Marine Fishery Service can require as they go
13 through their processes of issuing a biological opinion.

14 So to answer your question, it would depend upon
15 what the various impacts are. I think in the two 408
16 requests that have been granted up to this point, those
17 were done well under six months from when we actually got
18 the letter from the Reclamation Board.

19 MEMBER BURROUGHS: Okay. Could you answer for me
20 what would be the implications if we do not send the 408
21 letter right now and wait until....

22 MR. SANDNER: We already have issued a 408 permit
23 for Segments 1 and 3 on this particular project. And we
24 have been working with the Reclamation Board and the TRLIA
25 applicant on their overall project. And we will continue

1 to work with them on putting their information together so
2 that they can move through the 408 process. So it's not
3 like we're going to stop doing the coordination and the
4 cooperation that we're currently -- that we currently have
5 underway.

6 I think the applicant believes that it's important
7 to have that 408 request in the Corps of Engineers' hands
8 so they can work through their project in a timely
9 fashion. And as I said, I do not see a problem with the
10 Reclamation Board if the Board feels comfortable sending a
11 letter, at this time, sending it to the Corps.

12 MEMBER BURROUGHS: My question was, what were the
13 implications if the 408 letter didn't get sent now.

14 MR. SANDNER: Again, my answer was a little bit
15 roundabout. But from the Corps' viewpoint, I don't think
16 there's any implications for us. We will continue to work
17 with the applicant.

18 MEMBER BURROUGHS: Okay.

19 Could somebody tell me in terms of -- I
20 think Butch was the first one that mentioned it. We were
21 talking about the 408 letter credit. What's the dollar
22 value that is represented with getting credit on this
23 piece?

24 MR. SANDNER: I have no knowledge of that. I
25 don't know what the dollar amount is.

1 MEMBER BURROUGHS: Does anybody?

2 MEMBER RIE: I do. It's 70 percent of the total
3 cost.

4 MEMBER BURROUGHS: And the estimated cost for what
5 we're talking about right now is what?

6 MR. SANDNER: I think it's around 180 million is
7 the total cost associated with the project.

8 MEMBER BURROUGHS: Okay. And my last question for
9 you, Jim, is, in the future, when we have applications
10 that come before us, are you saying that the Corps is
11 comfortable with incomplete descriptions of a project as
12 long as we get the 408 letter in, you will continue to
13 work with the applicant and the Reclamation Board?

14 MR. SANDNER: I think our preference would be to
15 have all the information in the initial package. But
16 if -- for purposes of working through a particular
17 timeline -- and you don't have all that information today.
18 Everybody's working with schedules, trying to get boards
19 together at particular times of the month, trying to set
20 up construction awards and contract schedules.

21 So we get things that aren't complete all the
22 time, and we have to go back and make requests to the
23 applicant to provide that additional information. So we
24 would like to have it at the beginning. But if you don't,
25 we're still going to work through the process with you.

1 MEMBER BURROUGHS: I understand needing additional
2 information and working through that.

3 My question was asking for something that isn't
4 complete. That was the question. But for future
5 relationships.

6 MR. SANDNER: Again, we would prefer that the
7 package was complete.

8 MEMBER BURROUGHS: Okay. Thank you very much.

9 PRESIDENT CARTER: Okay. We -- I would like to
10 give the applicant a chance to address the Board if they
11 choose to on this item. And there also are members of the
12 public that would like to address the Board.

13 VICE PRESIDENT HODGKINS: Could I ask Jim one more
14 question?

15 Jim, I want to be sure I understood your answer to
16 the question of -- if we didn't issue this 408 letter at
17 this meeting and we waited a month or two months or
18 however long it takes to get the details of this project
19 resolved, are you saying that that wouldn't change the
20 timing for the 408 decision?

21 MR. SANDNER: We will continue to work with the
22 Reclamation Board and the applicant on this particular
23 project. We know that it's critical to this particular
24 basin to put this flood control project in place. We want
25 to do whatever we can from a federal standpoint of making

1 that move as quickly and as smoothly as possible.

2 So I mean, if we know that a 408 letter is going
3 to be coming somewhere in the process, you know, we're
4 going to continue to work with the applicant and the Rec
5 Board with the information that we have today.

6 Now, if the Reclamation Board would say to us,
7 "Hey, we have a real question about this project," we may
8 not request a permit for alteration. We probably wouldn't
9 put a lot of effort into the project, because you are the
10 folks that we have to work with, for 408 requests.

11 SECRETARY DOHERTY: But Jim, if we waited, you
12 would continue to work with them, if we told you, "Well,
13 it might be forthcoming in another month or two months"?

14 MR. SANDNER: No. My answer was, we would
15 continue to work with them. However, if the Reclamation
16 Board gave the Corps of Engineers information that you
17 didn't think it was a good project, we probably wouldn't
18 spend a lot of time working with the applicant.

19 My understanding is, is that the Reclamation Board
20 believes this is a good project and that they want to work
21 with the applicant to get all the information and keep the
22 project on schedule.

23 PRESIDENT CARTER: Thank you.

24 Mr. Shapiro.

25 MR. SHAPIRO: President Carter, Members of the

1 Board, thank you for the chance to address you again.
2 Scott Shapiro, special counsel for Three Rivers Levee
3 Improvement Authority.

4 I think most of the issue, if not 99 percent of
5 it, has been fully vetted. There are a bits of factual
6 information that might be worth sharing instead of arguing
7 the same thing again.

8 I should note, from Three Rivers' perspective,
9 every one of the questions that Steve Bradley asked, we
10 agreed, are important questions. They all need to be
11 answered. We can't construct a project until they are
12 answered. And we have a technical memo that gives the
13 answers and lays forth the process for getting through it.
14 And if anyone's interested in seeing it, Ric Reinhardt can
15 address the technical memo. But ultimately, we don't
16 think that's what today is really about.

17 The central question today, in Three Rivers' mind,
18 is whether we're still going to try to complete the
19 project in 2008. Because we don't believe, if we don't
20 start the 408 process with the Corps district starting
21 next week, that we will necessarily be able to complete
22 the project in 2008.

23 I agree with Jim Sandners that they will continue
24 to work with us so long as you're supportive. And we've
25 appreciated that relationship with the Corps tremendously.

1 But at some point, the document leaves Mr. Sandners and
2 the district's office and moves to the division. And the
3 division won't accept the packet until there's a letter
4 from the Rec Board initiating the 408 process. And
5 headquarters won't accept the packet until there's a
6 letter from the Board initiating the 408 process. That's
7 what we've been told.

8 So what this is about is getting that process
9 started. We're prepared, if this Board issues the letter
10 next week or authorizes Jay or Ben to send a letter next
11 week, we're prepared to present a draft EA to the Corps
12 next week and a completed 408 package next week.

13 It is conceivable that before this Board meets
14 again, the packet might be complete and ready to go to
15 division. And not issuing the letter as a result of
16 today's Board meeting could delay that at least a month.
17 We've been told that if our ducks are all in a line, then
18 by March 1, it is conceivable we could be constructing
19 next year.

20 The Corps has said to us that if we get everything
21 in next week, it is conceivable they could have all their
22 approvals done in February of next year, allowing us, with
23 your permit -- you still have to issue an encroachment
24 permit. But allowing us to get to construction by March 1
25 if the weather is good, that could still allow us to

1 complete this project in 2008. So that's really what this
2 is about for us.

3 Just want to see if there are any other key
4 factual points that I want to make here.

5 We do believe that we have analyzed the essential
6 issues of this project sufficiently, in order for the
7 Corps to do its 408 review. In particular, we have done a
8 cumulative impacts analysis. It was contained in our
9 environmental impact report. That report was sent in
10 draft to the Reclamation Board for comment. The Rec Board
11 commented. The comments said, "This may have impacts.
12 You may need an encroachment permit." And that's exactly
13 what we're doing. We're going through that process.

14 So we have analyzed cumulative impacts. We have
15 tracked every impact up the Feather River, up the Yuba,
16 and down the Feather, and down the Bear River. And we
17 have concluded that there aren't the kind of systemic
18 impacts which we believe would cause the Corps to have
19 concern. That's why we're sending it to the Corps, to
20 ensure that they agree.

21 Incidentally, we have the pleasure, dubious
22 pleasure, of having already received two 408 approvals. I
23 say "dubious," because we're all working through process
24 for the first time, every time.

25 In each of those, there were modifications made to

1 the project after you sent your letter to the Corps. In
2 each those circumstances, the Corps came back and said,
3 "We need more details on X. We need to understand Y
4 better." We worked with you. We submitted the additional
5 details. It went up to headquarters. Headquarters
6 approved it. So that notion that every detail isn't
7 resolved to start the 408 approval process is not a unique
8 notion.

9 In my mind, the systemic issues, the
10 programmatic-type issues that the Corps is looking at,
11 with 408, shouldn't really be affected by six feet on or
12 off the Modesto formation to address the Rice's concern.
13 It shouldn't really be affected by whether it's a gravity
14 drain or not a gravity drain for pump station 3.

15 The Corps will provide its input on whether it's
16 concerned about that. Steve will provide his input. This
17 Board will ultimately issue a permit, and that will decide
18 the issue. That's not, in my view, the big 408 issue
19 that's being looked at.

20 So unless you have additional questions, I don't
21 want to restate over and over what everyone's already
22 said. But I thought that those facts and the timing --
23 because you specifically asked about the timing. What
24 would happen if the letter wasn't issued? Our belief is
25 that if the letter isn't issued, it significantly

1 decreases our chance of completing construction in 2008.

2 Thank you.

3 MEMBER RIE: Question: Have you received 104
4 credit for the other two segments?

5 MR. SHAPIRO: We have received a section 104
6 credit letter for Segment 3 and Segment 1. That's
7 correct.

8 MEMBER RIE: Can I ask how long that took to
9 process?

10 MR. SHAPIRO: Ric?

11 MR. REINHARDT: Ric Reinhardt, Three Rivers
12 Program Manager.

13 It's been a little while. I remember, when the
14 Board sent a letter to the Corps, I want to say somewhere
15 between three and five months.

16 MEMBER RIE: And when do you anticipate awarding
17 the contract?

18 MR. REINHARDT: Our current schedule is for award,
19 March 1st.

20 MEMBER RIE: So if you back out five months, for
21 the 104 credit, where does that leave you?

22 MR. REINHARDT: Sounds about like today. We had a
23 call with division headquarters. As this Board is aware,
24 we had a path we were going for construction, where we
25 were going to proceed to construct without this 408

1 approval. And the district and the Reclamation Board and
2 everyone was committed to that path. When the division
3 broke this news to us that they weren't going to allow it,
4 the one thing they said is, if you get this encroachment,
5 the 408 request, into us as soon as possible, we will do
6 everything within our power to process this and stay off
7 of your critical path, awarding that construction contract
8 by March 1st.

9 And in fact, General Manager Punia and some staff
10 at the Department of Water Resources have a call scheduled
11 with division headquarters staff next week to try to run
12 this to ground, to exactly what we need to do to make that
13 happen.

14 MEMBER RIE: Then can I just clarify? The 104
15 credit which would be approximately \$130 million, that
16 does not go back to Three Rivers; that comes back to the
17 State of California; correct?

18 MR. REINHARDT: The Section 104 credit is for the
19 entire amount. And that credit is to the Reclamation
20 Board and then there will be a project, local project
21 cooperation agreement between Yuba County Water Agency and
22 the Reclamation Board. And in this agreement, you would
23 decide how that 104 credit will be split.

24 GENERAL MANAGER PUNIA: That's a correct
25 statement, the way I understand the section 104 credit.

1 PRESIDENT CARTER: Thank you. Mr. Hodgkins?

2 VICE PRESIDENT HODGKINS: You know, I thought I
3 knew how this works. Now it got me confused. Because I
4 thought what I heard Jim Sandners say is, this package
5 isn't going to go on until all these technical questions
6 are answered. Now, is that what I heard you say, Jim? So
7 are you trying to figure out if it really is a good reason
8 to go on here? Go ahead.

9 MR. SANDNER: I understand your question to be
10 that a 104 permit will not be granted until we have all of
11 the technical data. And that's correct.

12 VICE PRESIDENT HODGKINS: 408 instead of 104.

13 MR. SANDNER: That's correct. We have to have the
14 entire project, know what it is, have it fully analyzed so
15 that we can make a recommendation at the district level,
16 to the chief of engineers to approve that alteration.
17 That information has to be complete when we send that
18 request up.

19 VICE PRESIDENT HODGKINS: Okay. So now go back to
20 Scott, and I don't see that it makes any difference
21 whether it's this month or next month unless you think all
22 of those technical questions are going to get resolved
23 before the next Board meeting.

24 MR. REINHARDT: Every single 408 application
25 that's been submitted to date has had an incomplete set of

1 plans and specifications. They have all been typically at
2 the 90 percent. And I will defer to staff, if you concur
3 with that.

4 But certainly, in all Three Rivers, we've
5 submitted 90 percent plans and specifications that were
6 the basis for the 408 requests. The Corps came back and
7 said, "We approve alterations of the project, and here's
8 our comments that must be addressed before you proceed to
9 construction."

10 I don't see how that's any different. The one
11 difference is, instead of submitting 90 percent plans of
12 specification, we're submitting 60 percent plans of
13 specifications.

14 PRESIDENT CARTER: Any other questions?

15 MR. SHAPIRO: Butch, I guess the only thing I
16 would add is, in addition to the issue of what Ric said,
17 which is that all of the past applications have had some
18 level of incomplete information and still been processed,
19 and acceptably been processed, approval today takes us off
20 of the critical path of the Rec Board schedule.

21 It takes us off that issue of, if things are
22 sufficiently resolved in two and a half weeks, then it
23 goes up in two and a half weeks, instead of starting over
24 again in 30 days here to get that approval.

25 MEMBER BURROUGHS: Mr. President? I have two

1 questions.

2 PRESIDENT CARTER: Yes. Go ahead. Be brief. We
3 need to move on.

4 MEMBER BURROUGHS: How long will it take to
5 complete the information, and why wasn't it complete when
6 it was submitted?

7 MR. SHAPIRO: The answer how long it will take is,
8 it depends upon which information. The answer to why it
9 wasn't complete when it was submitted varies upon the
10 particular issue. All of these issues are iterative.

11 And I guess the final point that I would like to
12 make before Ric gives a little bit more detail is, we're
13 doing value engineering with this segment. What that
14 means is, before we finalize the plans and specs, we're
15 getting a contractor on board to advise us on the best way
16 to do it efficiently, cost effectively, and get it done in
17 2008.

18 If you finalize the plans, then there's no need to
19 bring the contractor on. So we're kind of getting
20 involved in that as well.

21 MEMBER BURROUGHS: Thank you.

22 MR. REINHARDT: Ric Reinhardt, Three Rivers
23 Program Manager.

24 The reason that these aren't finalized is, they were
25 never intended to be. The way we had structured this

1 contract is we were going to come forward in July for an
2 encroachment permit that would allow us to proceed with
3 the construction of the foundation. We were not going to
4 construct the embankment contract until next year, so the
5 embankment contract would continue to undergo the plans
6 and specs development. They wouldn't have been finalized
7 at this time. March 1st has been our schedule for some
8 time.

9 Now that we got pushed down this other path and we
10 have to go into 408, we have had to pull all of those
11 together at once, and we have a lot of drilling and other
12 work left to do before we can finish the embankment
13 portion of the contract.

14 PRESIDENT CARTER: Thank you.

15 Mr. Eres, would you like to address the Board on
16 this item?

17 MR. ERES: Thank you. Tom Eres representing
18 Hofman Ranch. Someone in the audience said, "briefly," so
19 I will take my usual two hours if that's okay.

20 We have been harping for some time that you're
21 dealing here with a major flood control piece of work
22 that's going to modify the plan of flood control in a
23 major way.

24 This is a 5-mile stretch. This is not just a
25 little piece of a levee here, a little piece of a levee

1 here. I have been harping for months that the 408 process
2 is important, and it was shunned aside. Everybody thought
3 they could go forward without getting 408 permit. And now
4 all of a sudden, 408 has now become very, very big. You
5 can't get 104 credit if you don't have the 408 process
6 locked in.

7 I think we've heard very clearly that the Corps
8 prefers a complete application. I think we've heard
9 clearly that the Board of Reclamation prefers a complete
10 application.

11 We support strongly the report you received from
12 Steve Bradley and think that it is, in fact, clear that
13 the recommendation that you do not proceed with a letter
14 today until you, in fact, know exactly what it is that you
15 are going to say in that letter that says, essentially,
16 you guys are okay, in principal, and you are going to
17 accept liability on behalf of the State of California and
18 hold the federal government harmless. And you are going
19 to push that down through Three Rivers and down through
20 them, to the County of Yuba and to 784, neither of which
21 are going to be able to respond in bond damages. It will
22 be the State of California that will pay the bill if there
23 is a problem.

24 The project isn't ready. They don't have
25 Proposition 1E funding yet and we know that. There are

1 many problems to be undertaken with respect to the
2 feasibility of this project.

3 We know that it has not been looked at
4 environmentally, systemwide. That's why we're looking for
5 the NEPA process to do that. And we are hopeful that a
6 full EIS will, in fact, be required in order to do that.

7 I would also suggest that the concern that's been
8 expressed by Three Rivers to move the dispatch creates
9 haste, makes waste. And I suspect that we will be back
10 again if you move forward with a letter, because there
11 will be another glitch somewhere along the line because we
12 try to say speed, speed, speed, push, push, push. There
13 will be no -- I suspect not much construction the rest of
14 this season. I doubt that they are going to make March.
15 And I have serious questions with respect to the cost
16 overruns that might be generated, just in answering the
17 questions posed by Mr. Bradley in his report. And we've
18 already talked this morning about how tight this project
19 is.

20 So I would strongly recommend that you heed the
21 staff report, that you decline at this time to issue this
22 408 letter. It does not appear that there's downside
23 risks, as Mr. Hodgkins, I think, drove to the bottom line
24 on that point. And let's give it another six -- well, 30
25 days to 60 days and let them put their sharp pencils

1 together and get this thing done right.

2 Thank you very much.

3 PRESIDENT CARTER: Thank you.

4 Any other questions from the Board? Comments?

5 MEMBER RIE: I have a question for Mr. Swanson.

6 PRESIDENT CARTER: Go ahead.

7 MEMBER RIE: The last round of 104 credit letters
8 took three to five months each to come back from the
9 Corps. And Jim Sandner, along with others of the Corps,
10 have already warned us that they will not process the 104
11 credit letter until they have the 408 request in hand.

12 So being that the State of California is the
13 beneficiary of the 104 credit to the tune of \$130 million,
14 do you have a recommendation for the Board in terms of the
15 timing of sending this letter?

16 MR. SWANSON: Well, I think what I have heard is
17 that starting the process does not put anybody in
18 jeopardy. The question is, is the Board comfortable
19 delegating authority? And, you know, I think multiple
20 things can happen. And ultimately, when we're all said
21 and done, the project has to be complete. We need our
22 technical experts to give us advice that when a permit is
23 issued, that we're comfortable with what the permit
24 conditions say.

25 Now, we've got this policy issue on how we move

1 forward to expedite the process. And I guess I would push
2 to decouple the process of when the Board hearings are,
3 from the 408 process, so that we don't get delayed another
4 month while we're waiting. If we're ready to submit the
5 408 package, but we don't have the ability to do that,
6 because we haven't had a Board hearing, then we
7 potentially lose time. Time is of the essence here, and
8 so I would say, let's push it, knowing that ultimately you
9 can come back on the permit. If you are not satisfied,
10 then you don't issue the permit.

11 It's very critical that we get the federal cost
12 share, we get the credit, so that we can maximize our use
13 of the limited bond funds that we have.

14 MEMBER RIE: Thank you.

15 PRESIDENT CARTER: Thank you.

16 So what's the Board's pleasure? We will entertain
17 a motion one way or the other.

18 VICE PRESIDENT HODGKINS: I would like to make a
19 motion, but I want to clarify to make sure other Board
20 members understand. I am going to move that we approve
21 sending the 408 letter and delegate the drafting of that
22 letter and the actual sending to Jay, with the
23 understanding that he's not to send it to the Corps until
24 the Corps has agreed that they have a complete package.
25 Okay? That they are ready to move with the process.

1 I think that accomplishes as much in the way of
2 speed as you can get, as long as you keep up to speed.
3 And once that happens, you get the letter.

4 But I think it's important for the Board members
5 to understand that the issues that Steve raised are going
6 to be resolved at the staff level, not at the Board level.
7 And from my point of view, I think that's the appropriate
8 place to resolve it. But you want to realize that we
9 worked hard to try and get a levee alignment here that
10 preserves some very important foundation stuff for
11 Mr. Rice's obligation.

12 And, you know, I have argued with the Corps before
13 about the trade-off between technically superior fairness
14 and the reality. And the Corps doesn't listen to fairness
15 and technical reality if it's a question within the
16 technical superiority.

17 So I'm telling you, there is no guarantee that if
18 we delegate this, that Mr. Rice won't lose that foundation
19 of stock, just so you know. But you come to a point
20 where, if that's where the Corps comes down -- I don't
21 think this Board will change its mind, in the future. But
22 that's neither here nor there, in fairness.

23 I think the rest of the issues that Steve raises,
24 I think, are appropriately resolved at the staff level.
25 They are not policy questions for the Board. And they are

1 not questions that ever get to the Board if there's any
2 way around it. They are technical issues and engineers
3 can figure out what's the best way to do it.

4 Anyway, so the motion is, delegate it, the sending
5 of the 408 letter, to the general manager, with the added
6 guidance that the letter gets sent when the Corps agrees
7 the information that's being provided by the applicant is
8 an adequate package for them to kick off 408.

9 MEMBER SUAREZ: May I ask a question of
10 Mr. Hodgkins?

11 So for me to understand, what you are trying to
12 deal with is the gap between us meeting today and us
13 meeting in a month. And if they complete it in a month,
14 fine. And if not, then all this was for naught.

15 Is that correct?

16 VICE PRESIDENT HODGKINS: Yes.

17 PRESIDENT CARTER: We have a motion on the table.

18 MEMBER SUAREZ: I second.

19 PRESIDENT CARTER: We have a motion, but we do not
20 have a second.

21 MEMBER SUAREZ: I did.

22 PRESIDENT CARTER: We do have a second? Okay.

23 Does everyone understand the motion?

24 (No response.)

25 PRESIDENT CARTER: I will assume that's a yes.

1 Then is there any further discussion?

2 Okay. Mr. Punia, would you call the roll, please?

3 LEGAL COUNSEL MORGAN: If you could, before you
4 vote on this, I would recommend that one of the things --
5 that when I asked Mr. Sandner to recite for the Board's
6 benefit everything that that letter was going to have to
7 contain, three of the things are nonproblematic, accepting
8 into the federal projects, agreeing to operate and
9 maintain indemnification, because you are going to have
10 the ability to deal with all those issues in the permit
11 process.

12 The one thing that you're not really deciding
13 today, but which will have to go into the letter will be
14 inclusion that it's not injurious to the project.

15 I would recommend that as you delegate it to the
16 general manager, you also require the general manager to
17 make specific findings supported by evidence that the
18 project will not be injurious to the plan of flood
19 control.

20 PRESIDENT CARTER: Okay. That is staff's
21 suggestion.

22 Do you accept the amendment to your motion?

23 VICE PRESIDENT HODGKINS: Tell me what that means.

24 LEGAL COUNSEL MORGAN: Mr. Sandner went through
25 the list of things that the Corps wants in the letter.

1 And there was, in the letter that Mr. Bradley read
2 during -- I think the SAFCA project, referenced to it. "A
3 finding by the Board project is not injurious to the plan
4 of flood control." That's not a finding that the Board is
5 making today, I don't believe, although you could include
6 it in your resolution.

7 But I think given the level of technical detail
8 that are remaining, I think that's one of the things that
9 you are delegating to staff to determine. And so I think
10 in order to make that determination, you should
11 specifically direct the general manager to make findings
12 on that point, supported by the evidence in the materials
13 that are going to be presented by the applicant. And that
14 could be something that could then be used to support that
15 decision.

16 MEMBER RIE: Have we ever included findings in any
17 of the other 408 letters?

18 LEGAL COUNSEL MORGAN: It won't be in the 408
19 letter. This will be something before he makes that --
20 prepares that letter, which the letter will say that the
21 project will not be injurious to the plan of flood
22 control. He just simply doesn't say that. He actually
23 makes a decision based -- the rest of the -- the rest of
24 the statements are mere promises.

25 If the project is built, will the State Board

1 accept it as part of the federal project? It will operate
2 and maintain it, and it will indemnify the federal
3 government. We'll have to get a separate agreement before
4 the permit is issued with locals, as we've done in the
5 past, similar to a local project cooperation agreement in
6 which they, in turn, make those assurances to the state.

7 The one difference, the one extra thing here,
8 being that the federal government, and I didn't realize
9 it -- that's why I asked for Mr. Sandner's comments here.
10 I didn't know if it was something that the Board had put
11 in on its on, or whether it was something that is required
12 by the Corps, and it is something that's required by the
13 Corps, to say that this is not going to be injurious to
14 the plan of flood control.

15 And so unless you have the information available
16 to make that finding today, you should ask the general
17 manager to make a determination about that before he sends
18 the letter with that assurance in the letter.

19 So if you can make your finding today on your own,
20 then do so, and then direct the general manager to send
21 the letter when it's ready.

22 VICE PRESIDENT HODGKINS: Okay. It's not
23 injurious to the plan of flood control. See, I'm not sure
24 how the general manager can determine if it's injurious to
25 the public. Because somebody's ox is going to get gored

1 somewhere by this project. And I don't think the Board
2 can put that burden on the general manager to decide --

3 LEGAL COUNSEL MORGAN: Well, the Corps --

4 VICE PRESIDENT HODGKINS: To decide that nobody's
5 going to get injured, because somebody's going to be
6 injured by this project. You don't do a project without
7 injuries.

8 LEGAL COUNSEL MORGAN: Well, it's not injurious to
9 the plan of flood control.

10 VICE PRESIDENT HODGKINS: It is to the plan of
11 flood control. Because that, I think, the general can
12 handle.

13 LEGAL COUNSEL MORGAN: Here's the language from a
14 previous letter. No, no, no. This is the proposed
15 language for this one. I'm sorry. I apologize.

16 "The Board has determined the proposed alteration
17 will not have a detrimental effect on the San Joaquin
18 River Flood Control" -- wait a second.

19 (Audience commotion.)

20 LEGAL COUNSEL MORGAN: The same idea -- "for the
21 Sacramento River Flood Control Project."

22 VICE PRESIDENT HODGKINS: Okay.

23 LEGAL COUNSEL MORGAN: So the Board can make that
24 determination or the Board could delegate to the general
25 manager to make that determination based on evidence in

1 the record.

2 MEMBER RIE: I think we included that in our
3 motion, typically, don't we?

4 LEGAL COUNSEL MORGAN: But the question is, since
5 you're delegating to the general manager to make
6 determinations because the Board hasn't yet had all the
7 information provided to it, that's just one more thing
8 that you are specifically going to delegate to the general
9 manager, to make that decision. Otherwise, the Board will
10 make the decision itself. So either the Board makes the
11 decision or delegates it to the general manager.

12 MEMBER RIE: Aren't we making the decision and
13 delegating the actual writing and signing of the letter?

14 LEGAL COUNSEL MORGAN: I think you should be very
15 specific about this point, because you are making a
16 finding that this is not injurious to the Plan of Flood
17 Control.

18 VICE PRESIDENT HODGKINS: May I ask Jay a
19 question?

20 Are you comfortable -- do you feel you can make
21 that determination?

22 GENERAL MANAGER PUNIA: I will consult with the
23 chief engineer. But as an engineer, setting back a levee,
24 I cannot envision how it is injurious to the plan of flood
25 control. But I will consult with the chief engineer to

1 provide input on this subject. But I cannot envision that
2 setting back a levee can be injurious to the rest of the
3 flood control project.

4 VICE PRESIDENT HODGKINS: I agree with that. So I
5 am going to include the specific language that says that
6 the general manager must be able to determine -- or shall
7 make a determination based on what your --

8 LEGAL COUNSEL MORGAN: Evidence on the record.

9 VICE PRESIDENT HODGKINS: On the record, that the
10 project is not injurious to the plan of flood control.

11 PRESIDENT CARTER: Very good.

12 Any other discussion?

13 MEMBER BURROUGHS: Yes.

14 MEMBER BROWN: I'm not sure that we should put
15 that burden on the general manager. I think it's a staff
16 decision, Mr. Chairman. A Board decision.

17 PRESIDENT CARTER: Okay.

18 Any other comments, discussion?

19 Okay. So we have a motion before us and a second.

20 The motion is to approve the delegation of the
21 authority to the general manager to send a letter to the
22 Sacramento District Army Corps of Engineers requesting
23 Section 408 approval to alter the federal flood control
24 project by constructing 5.7 miles of setback levee and
25 degrading the existing federal levee replaced by the

1 setback levee after the setback levee has been accepted as
2 part of the project levee by the Corps, with the
3 stipulation that the letter be sent when the application
4 package is complete, and that the general manager shall
5 make findings that the improvements are not injurious to
6 the Sacramento Valley plan of flood control, supported by
7 findings that are on the record -- supported by evidence
8 on the record.

9 MEMBER BROWN: A point of order, Mr. Chairman. Do
10 we vote on the amendment first, or was that an amendment.

11 Is it an amendment, or was it included in the --

12 VICE PRESIDENT HODGKINS: It's included in the
13 original motion.

14 PRESIDENT CARTER: And I guess I may have -- was
15 the second -- so it's included -- it's included in the
16 original motion.

17 MEMBER BROWN: Okay.

18 PRESIDENT CARTER: Does everybody understand the
19 motion?

20 Okay. Very good.

21 Mr. Punia, could you call the roll?

22 GENERAL MANAGER PUNIA: Board Member Emma Suarez?

23 MEMBER SUAREZ: Yes. Aye.

24 GENERAL MANAGER PUNIA: Board Member Butch
25 Hodgkins?

1 VICE PRESIDENT HODGKINS: Aye.

2 GENERAL MANAGER PUNIA: Board Member Teri Rie?

3 MEMBER RIE: Aye.

4 GENERAL MANAGER PUNIA: Board Member John Brown?

5 MEMBER BROWN: Aye.

6 GENERAL MANAGER PUNIA: Board Member Rose Marie?

7 MEMBER BURROUGHS: No.

8 GENERAL MANAGER PUNIA: Board Member Lady Bug?

9 SECRETARY DOHERTY: No.

10 GENERAL MANAGER PUNIA: President Ben Carter?

11 PRESIDENT CARTER: Aye.

12 So the motion carries.

13 Very good. Thank you very much.

14 We will now have a ten-minute stretch. So we will
15 be back here at 3:28.

16 (Thereupon a break was taken in
17 proceedings.)

18 PRESIDENT CARTER: We'll go ahead and continue.

19 We are on Item 10.B, Atlas Tract Reclamation
20 District 126, Application No. 18257 in San Joaquin County.

21 Mr. Bradley.

22 CHIEF ENGINEER BRADLEY: Yes. The applicant
23 actually has a PowerPoint they would like to present
24 first. I think they will probably do a much better job of
25 describing their project. And then I will go into what

1 actions the Board will be asked to take and my
2 recommendation on that.

3 So with that, I am going to turn it over to Scott
4 Shapiro who will make a presentation on the project for
5 the applicant.

6 PRESIDENT CARTER: Very good. Thank you.
7 Mr. Shapiro?

8 MR. SHAPIRO: Thank you, President Carter, Members
9 of the Board. Again, Scott Shapiro. Taking off one hat,
10 putting on another hat. And now I am special counsel for
11 Reclamation District 2126. And we'll get the PowerPoint
12 started here.

13 MEMBER BURROUGHS: Excuse me, Mr. President. I
14 have a question before we begin this part.

15 PRESIDENT CARTER: Please ask.

16 MEMBER BURROUGHS: Do we not have a policy that
17 before things come before our agenda that the Board
18 members need to receive the information prior to the day
19 before the Board meeting?

20 PRESIDENT CARTER: That's our guidance, yes.

21 MEMBER BURROUGHS: I did not receive the
22 information.

23 PRESIDENT CARTER: Okay. So noted.
24 Please proceed.

25 MR. SHAPIRO: Thank you. So the PowerPoint

1 handouts that I have handed out are exactly as what's up
2 on the board with the exception of the title slide, which
3 didn't print properly.

4 So I will move to the agenda item.

5 (Thereupon an overhead presentation was
6 presented as follows.)

7 MR. SHAPIRO: And the agenda item, which I will
8 read briefly, consider approval of a letter to the
9 Sacramento district, requesting Section 408 approval to
10 alter the federal flood control project levee between Bear
11 Creek and Mosher Slough, within the City of Stockton, by
12 moving the general alignment of the existing project levee
13 approximately 40 feet to the west, to allow construction
14 of the county road and provide for residential development
15 of Atlas Tract.

16 I am going to highlight for you, on this next
17 slide, the two errors that I believe exist in the agenda
18 item wording. One is, it's construction of a city road,
19 not a county road. And secondly, this application does
20 not have a connection to the residential development of
21 Atlas Tract.

22 And what I would like to do is to give you an
23 overview of the project explaining how that connection
24 doesn't exist, and talk to you about all the reasons this
25 is a good project. In the simplest form, this project is

1 moving a levee 40 feet to the west to make room for a
2 road.

3 --o0o--

4 MR. SHAPIRO: So here is an aerial photo that I
5 can use to orient you. Do you see the little cursor on
6 your little screens? Okay. Good. So what we have here
7 is 8 Mile Road. This is in the Stockton area.

8 And then down here at the bottom, we have Hammer
9 Lane. You have probably seen both of those interchanges
10 as you drive down to Stockton.

11 Running north-south in the middle is I-5. You can
12 see the little I-5 symbol there, in the center and towards
13 the bottom.

14 This blue line running north to south and located
15 to the west of I-5 is Atlas Tract -- excuse me, is Trinity
16 Parkway. And this is a road that already exists. It runs
17 from 8 Mile Road and dead ends after crossing Bear Creek.

18 And the project proposal here is to take the red
19 line, which is the existing project levee, that's the
20 federal levee, and move it 40 feet to the west to make
21 room for the green line. And the green line is the
22 continuation of Trinity Parkway, which, as you can see,
23 will travel all the way down to reconnect back up at
24 Hammer Lane. That's the basic overview.

25 The only other fact I would like to give you at

1 this point is, this yellow line, which you may wonder, is
2 a perimeter levee that surrounds Atlas Tract. And you can
3 see Atlas Tract right here. The perimeter levee, or the
4 yellow line, is an existing levee. It is an existing
5 levee that has been certified and has been accepted by
6 FEMA already.

7 Atlas Tract already has 100-year flood protection
8 according to FEMA. According to our calculations, it
9 actually has 300-year flood protection. It's one of the
10 highest flood protection areas in Stockton.

11 But that's relevant, because that's why this is
12 really not a development issue, because it already has the
13 flood protection necessary for development.

14 --o0o--

15 MR. SHAPIRO: We'll switch to the next slide.
16 This is an aerial view looking south. So this -- I will
17 back up just one second to orient you. This would be
18 sitting, right here where my cursor is, and looking south.
19 And it's a little fuzzy, but you will see these shaded
20 areas, and the shaded areas are the existing project
21 levee. So the project levee on Bear Creek runs in here.
22 Then it turns and runs south down this levee we want to
23 move. Right here, this is the Trinity Parkway Bridge
24 where Trinity Parkway currently dead ends at the north of
25 Atlas Tract.

1 This bridge was constructed about a year ago. Jim
2 Giottonnini from the City of Stockton will talk to you
3 about this bridge and the investment by the city in that
4 bridge. It was constructed after receipt of a Reclamation
5 Board permit from this Board, allowing that bridge to be
6 constructed. And then here's the south end of Trinity
7 Parkway, now running to the north.

8 --o0o--

9 MR. SHAPIRO: Let me zoom in a little bit to give
10 you a closer view. Again, here's Trinity Parkway coming
11 south. Here's the Bear Creek Bridge that's already been
12 constructed with the Rec Board permit.

13 Red is where we want to move the project -- excuse
14 me, purple on this one is where you want to move the
15 project levee. Red is the existing project levee. And
16 green is making room for Trinity Parkway so it can run all
17 the way, north-south.

18 MEMBER RIE: There's no purple.

19 PRESIDENT CARTER: There's no purple on yours?

20 Well, there's a -- there's no purple on that one
21 either. This one has purple. But I think the general
22 point is, everything's moving over 40 feet to the west to
23 make room.

24 Now Chris Neudeck will be speaking to you a little
25 bit later about the actual design of the proposed levee.

1 And there is a crossing at Otto Drive, which would allow
2 Otto Drive to get in and out of Atlas Tract. And so I
3 suppose to that extent, there is some connection between
4 the development of Atlas Tract and this project.

5 But the application really, here, is to move it
6 over, separate from a crossing issue. We could have done
7 a separate application for crossing. But it was all
8 included in one.

9 --o0o--

10 MR. SHAPIRO: So here's the existing levee. And
11 it is deficient, as Chris Neudeck will talk about. We had
12 done borings and had Kleinfelder analyze the borings and
13 determined that we have exit gradient problems and
14 underseepage problems. And we'll go through that. Also,
15 stability problems.

16 PRESIDENT CARTER: In spite of that, it's got
17 300-year protection?

18 MR. SHAPIRO: No. The 300-year protection is the
19 yellow levee. And so what you have here is, here, you
20 have a water course, Bear Creek, running east to west
21 along the north. And here you have Mosher Slough running
22 east to west, along the south.

23 And this levee, the one that we're looking at
24 moving, was the western-most levee protecting the city of
25 Stockton from tidal influences out here in the delta,

1 which is all the way to the left side of the picture.

2 This new levee, the yellow one, is the 300-year
3 levee. And it connects up at the north and the south. It
4 in essence makes the existing levee we want to move
5 redundant. In fact, as you will hear, one of the things
6 we talked about doing was taking it out completely,
7 because it's now been replaced by a brand new 300-year
8 levee. But the decision was made, we would do better to
9 leave it in and actually offer a redundant level of flood
10 protection for Stockton.

11 You've heard about this compartmentalization
12 project that's been talked about for SAFCA, taking Natomas
13 and putting some cross-levees in. One area floods;
14 another one doesn't flood. So this would be similar, a
15 redundant or double layer of flood protection for
16 Stockton.

17 --o0o--

18 MR. SHAPIRO: So I just want to run through
19 briefly why, in our view, this is not a development issue;
20 it's a transportation issue.

21 The staff report seems to incorrectly assume that
22 the application will result in buildings being placed in
23 unprotected areas. The executive orders that are included
24 both refer to that, and that's not the case.

25 A LOMR was actually issued for this property on

1 March 30th, 2007. Again, a LOMR is a letter of map
2 revision, and it's FEMA acknowledging the areas has
3 100-year flood protection.

4 So I will confess, I am usually standing before
5 you saying, "Please allow me to fix the levee so I can
6 build houses behind it." That seems to be the clients
7 that have hired me of late. That's not what's going on
8 today.

9 The levee's already been fixed. Houses can go
10 behind it, right now, according to FEMA. We're here
11 asking you allow the levee to move so we can put a road
12 in.

13 It's about transportation. In fact, the
14 application specifically noted it's a transportation
15 issue. And the issue of development had not come up with
16 staff beforehand, and so we haven't had a chance to
17 discuss with staff this issue. We didn't know that until
18 the staff report was sent to us on Monday.

19 --o0o--

20 MR. SHAPIRO: Here's a copy of LOMR issued March
21 30th. You can see that Atlas Tract, which is in this
22 picture to the right, the gray area, says Zone X. Zone X
23 means it has 100-year flood protection or greater. So
24 that was in effect as of March 30th of this year.

25 --o0o--

1 MR. SHAPIRO: The next slide is the actual
2 application to this Board and the description of the
3 proposed work. Alteration of existing north-south dryland
4 levee. We all call it a dryland levee, because there's no
5 waterside. There's dry land on one side and dry land on
6 the other side because there's levees all around it.

7 Located on the eastern end of Atlas Tract between
8 Bear Creek and Mosher Slough by as much as 300 feet. We
9 weren't sure exactly how many feet it would need to be at
10 that point.

11 Trinity Parkway is a minor arterial identified in
12 the 1995 Stockton general plan, and needs to be
13 constructed to complete the city's circulation plan.

14 --o0o--

15 MR. SHAPIRO: We did a mitigated neg dec. That
16 mitigated neg dec was done by the City of Stockton, which
17 was the road building entity. And it was also certified
18 by reclamation district 2126 as a responsible agency,
19 since we're the levee construction agency.

20 The draft and the final were both sent to the
21 Reclamation Board, previously. And we did not receive
22 comments on the draft and didn't hear anything on the
23 final.

24 I just included a section of the mitigated neg dec
25 here, noting that the area is already protected by a LOMR,

1 I guess, protected by a levee, which a LOMR has
2 acknowledged provides 100-year flood protection, and that
3 this is a transportation issue.

4 --o0o--

5 MR. SHAPIRO: So what are we asking for today?

6 Well, the good news is, is I don't have to explain
7 408 extensively after the last almost two-hour discussion
8 of it. But we're asking for the same thing Three Rivers
9 was, which is a 408 process to be initiated with the
10 Corps.

11 The only difference here is, is, I don't think
12 there's any argument that the package isn't complete.
13 It's already been put together. We haven't heard that
14 there's any technical deficiencies in it.

15 And Steve, you will correct me if I am wrong, but
16 there was nothing like that in the staff report. So I
17 think the issues that plagued the Three Rivers letter a
18 few minutes ago aren't really relevant here.

19 We're not asking for a permit today. We're not
20 asking the general manager to be able to issue a permit.
21 We're not, you know, in our view, discussing permit terms
22 which the staff report does, because permit terms go into
23 a permit. And all that's happening today is we're saying,
24 "Yes, this is a good project. Please consider it."

25 My expectation is, the Corps will provide comments

1 back, and those, coupled with staff's comments, will
2 result in an actual permit with language we can discuss.

3 So again, this allows the Corps to begin its
4 process.

5 --o0o--

6 MR. SHAPIRO: Why should the Board start the
7 process?

8 Well, this is the role of the Board. The Board is
9 the nonfederal sponsor, and RD 2126 can't go directly to
10 the Corps and say, "Please consider modifying the federal
11 project." That's the Board's role. And we think it's
12 appropriate for the Board to make that request.

13 This action allows the city to meet its
14 transportation obligations under state law. RD 2126
15 really took this very seriously at the beginning, because
16 we didn't know what we wanted to do. We didn't know
17 whether we should take out the levee, move it, put the
18 road on top of the levee, like Garden Highway in the
19 Sacramento area. That was considered. Perhaps
20 construction of a floodwall, so we could leave it in
21 place. But a flood wall would narrow the area that the
22 levee takes up, and we would have room for the road.

23 So we met with your staff. We actually flew back
24 to Washington, D.C., and met with Steve Stockton on this
25 project, and showed him our options, and asked him which

1 of the various options he thought was the best, and did he
2 see any fatal flaws.

3 And then all of those comments that we got from
4 headquarters and from staff were incorporated into the
5 eventual project that you have before you now.

6 Sending it to the Corps will allow the Corps to
7 officially say whether they still think this is the right
8 project.

9 And this does provide an opportunity for the state
10 to replace a deficient levee with a brand new levee,
11 engineered to current standards at no cost to the state.

12 So I would argue, this isn't neutral flood
13 protection. This isn't a case where we're coming in and
14 saying, "We have a transportation need. Please move a
15 levee over, and there's no benefit." Actually, we're
16 going to have a transportation benefit, and we're going to
17 have a flood control benefit, as Chris Neudeck will talk
18 about, the standards we used versus the deficiencies of
19 the existing levee.

20 --o0o--

21 MR. SHAPIRO: Now I'm going to ask Jim Giottonnini
22 to come up. He's the public works director for the City
23 of Stockton.

24 And he has one slide to give you a little bit of
25 detail on the transportation benefits since that's not my

1 thing.

2 MR. GIOTTONNINI: Good afternoon. I am Jim
3 Giottonnini. I'm the public works director for the City.

4 I am here today because this request is vitally
5 important to the city. Trinity Parkway is north-south
6 arterial. It's needed for a variety of reasons, as Scott
7 described. It's the only north-south road in this portion
8 of Stockton, west of I-5.

9 It's supported by our police and fire departments,
10 primarily because of emergency access to the residents.

11 We have a thousand homes, basically, that are
12 served by that roadway north of Hammer Lane, with one
13 point of connection. And if there's an accident on that
14 road, something closes that road, you know, fire, police,
15 ambulances can't get into this. This roadway would
16 provide a second point of access and also closer, you
17 know, to a fire station.

18 It's also supported by the school district. The
19 students are on the south side of Bear Creek. The schools
20 are on the north side of Bear Creek. This would be a
21 shorter route for the school children to get to schools.

22 It's also supported by Cal Trans. They are a big
23 advocate in the Stockton area that we provide arterials to
24 take off the load from I-5 and Route 99. And they're a
25 strong supporter of this project.

1 It's going to increase or decrease the vehicle
2 miles traveled because you don't have to come to the end
3 of a cul-de-sac and turn around and come out. And it will
4 also have a result on air quality benefits to the city and
5 the area.

6 We've already constructed, as described, a bridge
7 over Bear Creek, after we received the permits from the
8 Corps of Engineers and the State Reclamation Board. And
9 here's the permit from the state Reclamation Board, if you
10 need that.

11 We've already spent about \$4.6 million to build a
12 bridge and a road to the bridge. And we've
13 appropriated -- the city council appropriated the
14 remaining \$6.6 million to build the rest of the roadway.
15 And they've done this all locally funded. This is funded
16 by development fees paid by new development.

17 This new relocated levee will allow this all to
18 happen, and it will provide redundant flood protection, as
19 Scott has already described.

20 But I would also like to include in the record a
21 letter from Assemblymember Agazarian that supports his
22 position of the city.

23 As you get the letter, you will see, the first
24 part of the letter basically repeats what I just
25 reinforced, that it's needed primarily for transportation

1 purposes.

2 But I would like to read just the third paragraph
3 of the letter. I Think it's very well stated. He said,
4 "I understand that this project will result in a
5 replacement of a deficient levee with a brand new levee
6 constructed to modern engineering standards, all at no
7 cost to the State, by allowing local agencies to decrease
8 risks to residents, while not imposing any additional
9 costs on the state budget. This project is exactly the
10 kind of project we should be promoting."

11 And I wholeheartedly agree. And that concludes my
12 portion of the presentation. I would be glad to answer
13 any questions.

14 MEMBER BURROUGHS: Yes. Can I ask a question?

15 PRESIDENT CARTER: Let's have Mr. Shapiro wrap up,
16 and then we'll ask questions collectively of the
17 applicant.

18 MEMBER BURROUGHS: Okay.

19 MR. SHAPIRO: At this point, I would ask Chris
20 Neudeck to come up. Then Chris is going to talk about the
21 specific standards that were used to design the new levee
22 as well as give some specificity to my general statement
23 that the existing levee was deficient.

24 MR. NEUDECK: Hi. Chris Neudeck. I serve as the
25 direct engineer for RD 2126, Atlas Tract.

1 Let me clarify the issue of what we're
2 contemplating as being deficient. I think it's important,
3 because I think it's really a comparative comment more
4 than it is stating what the actual levee that exists
5 there.

6 The actual levee that exists there does meet
7 current standards. It's just that when we relocate the
8 levee, we're going to be relocating it with engineered
9 fill. And to give you an example, I took a couple of
10 examples. One, the exit gradient. Probably one of the
11 most notable issues that we hear today.

12 The underseepage. We'll be decreasing -- you have
13 to think about this in reserve. Decreasing the
14 underseepage by 46 percent. We're going from, at the base
15 flood elevation, hundred-year floodplain from about a .4
16 down to a .2. Now, when constructing new levees, the
17 criteria by the Corps is to have the exit gradient below
18 .3. So we'll be meeting that with our new engineered
19 fill. The existing, that we analyzed here recently was
20 about .4. So it's below the .5. It's marginally below
21 the .5. And we feel that the increased reduction in the
22 exit gradient is a responsive and responsible action.

23 The second thing is on slope stability. We have
24 increases, up, as much as 85 percent on slope stability.
25 Again, we're going from factors of safety in the high ones

1 up to factors of safety of 3.5. So you can see the
2 increase is substantial, and that new engineered fill will
3 make a substantial difference in the strength and
4 stability and underseepage characteristics of that levee.

5 So from that perspective it's a tremendous
6 enhancement that will be borne by local expense only, no
7 state or federal cost.

8 The second item is the issue of alternatives.
9 Scott hit on most of the alternatives in his discussion.
10 But I want to go back over those, because I think they are
11 important. We considered options such as flood walls,
12 retaining walls, basically taking that structure, there
13 within the levee, and narrowing it, to meet the needs of
14 the widened Trinity Parkway, or basically the Trinity
15 Parkway.

16 Right off the bat, we knew that that was going to
17 come with a certain degree of reaction, particularly from
18 the Corps, particularly on the issue of flood walls. So
19 we started working with them. And as Scott indicated,
20 that is not really the position that most flood control
21 engineers nowadays want, so we went back to the full
22 earthen structure. And then that was where the
23 realignment issue came up.

24 Okay. The third issue is on design standards.
25 Scott, if you can flip to the next slide, I can go over

1 the design standards.

2 --o0o--

3 MR. NEUDECK: Basically, what we have from the
4 design standards, we've chosen 3-to-1 on both landside and
5 waterside. Twenty-foot wide crown, 16-foot patrol road,
6 20-foot easements on both the upstream and downstream
7 face, 15-feet of the root zone, and then on the Trinity
8 Parkway side, you can see there, in addition to the 20
9 feet, we have a singly-loaded street so nothing up against
10 that side of the right-of-way.

11 I can flip back to my slide.

12 --o0o--

13 MR. NEUDECK: The issue on the incompatibility in
14 Trinity Parkway, Jim Giottonnini, I think, for the most
15 part related to that on the transportation.

16 And to conclude my comments, County of San
17 Joaquin, who currently is the maintenance -- has the
18 maintenance responsibility on behalf of this section of
19 project levee, namely because it's connected to Bear Creek
20 that extends up Bear Creek, has no objection and has
21 written a letter thereof to that fact. So they support
22 this relocation, realignment, and strengthening the levee
23 as well.

24 So that concludes my comments.

25 MR. SHAPIRO: Moving to this cross-section, this

1 is the second to the last slide.

2 --o0o--

3 MR. SHAPIRO: I said before, and I firmly believe
4 that the debate today really isn't on permit conditions,
5 because we're not asking you to issue a permit. But I do
6 at least want to note that the staff report advocated that
7 if the Board proceeded, you proceed with 50-foot easements
8 on either side. Fifty-foot easements is inconsistent with
9 the dialogue we've already had with headquarters and with
10 district staff and in some of our meetings with your staff
11 as well.

12 But it may be another issue, because as
13 Mr. Neudeck pointed out, while we have 15-foot dedicated
14 vegetation free, and another 5-foot which can't have
15 vegetation, for a total of 20 feet -- this is technically
16 the landside of the levee, even though both are land
17 sides.

18 On the land side, we then have 96 feet of
19 right-of-way for a road. And since the basis of a space
20 is usually to prevent encroachments from getting too
21 close, make sure our fences and houses and pools aren't
22 going in, and to make sure you have access during a flood
23 fight, we've got a four-lane road there, 96 feet, to
24 achieve all that. So we think that meets those
25 requirements. Although, again, in our mind, it's not a

1 permit condition issued today.

2 So in summary, we request that you send the 408
3 letter. A draft is in your Board packet. And we think
4 the draft is fine. We think it's exactly the appropriate
5 language that should be sent.

6 We have previously communicated with the Corps
7 district and with headquarters, and, based on their
8 feedback, designed the project. We received positive
9 feedback from them.

10 We think an approved project is an advantage to
11 the state because we will get a better flood control
12 structure than what we have now and better setbacks than
13 what we have now. We think the staff report improperly
14 characterizes the project purpose as a development issue.
15 And if that is pursued, it will result in a lost
16 opportunity to have a state levee reconstructed at no
17 cost.

18 And finally, the important transportation issue
19 here needs to be served. I am general counsel of the
20 Central Valley Flood Control Association. And I spend a
21 lot of time in that role advocating that other disciplines
22 not take precedent over flood control. I argue
23 strenuously that environmental mitigation and restoration
24 should not take precedence over flood control.

25 I personally think transportation shouldn't take

1 precedence over flood control. But this isn't a case of
2 taking precedence. This is a case of coming up with a way
3 that both can be met, that makes both of them better.
4 And since it involves no cost to the state, we think it's
5 an ideal solution.

6 So with that, myself, Jim, and Chris are all
7 available for questions.

8 Thank you.

9 PRESIDENT CARTER: Questions for the applicant.

10 MEMBER RIE: Yes, I have a question.

11 PRESIDENT CARTER: Yes?

12 MEMBER RIE: I have a question for the gentleman
13 from Stockton.

14 PRESIDENT CARTER: Jim Giottonnini.

15 MEMBER RIE: Mr. Giottonnini. I apologize.

16 MR. GIOTTONNINI: It's done all the time.

17 MEMBER RIE: For the kids to get to school, do the
18 parents have to take -- depending on where they live, do
19 they have to get on I-5 to get the kids to school?

20 MR. GIOTTONNINI: Some do, yes.

21 MEMBER RIE: And I noticed, on the bridge, that
22 there's a -- what looks like a trail.

23 MR. GIOTTONNINI: It's a very wide sidewalk that's
24 also dual purpose as a bicycle path.

25 MEMBER RIE: Okay. So will this bicycle path

1 serve the purpose of getting the kids to school also?

2 MR. GIOTTONNINI: Yes.

3 MEMBER RIE: Thank you.

4 PRESIDENT CARTER: Any other questions of the
5 applicant?

6 VICE PRESIDENT HODGKINS: I have one. Who will be
7 the permit applicant?

8 MR. SHAPIRO: The permit applicant is RD 2126,
9 which rob the agency that has satisfied CEQA requirements
10 to be able to construct the levee and will construct the
11 levee.

12 My expectation, based on the way the Board has
13 operated in the past, is that following construction,
14 there will be two entities responsible for O&M, just as
15 Three Rivers and 784 are jointly responsible for O&M of
16 levees that have been approved by Three Rivers.

17 Here, 2126, and the County of Stockton will both
18 be obligated for O&M unless and until the Corps and the
19 Rec Board agree otherwise.

20 PRESIDENT CARTER: Any other questions?

21 SECRETARY DOHERTY: Now -- you're not -- this is
22 not for development purposes, but the proposed roadway
23 improvements will be utility types, water, sewer, street
24 lights, PG&E, joint trans facilities.

25 MR. SHAPIRO: Yes. As I said earlier, this does

1 include the Otto Drive overpass into Atlas Tract. Maybe
2 "overpass" is the wrong word. Ramp up and over the levee
3 into Atlas Tract.

4 And my understanding of why your staff seems to be
5 opposing it is that we shouldn't move the levee, because
6 moving the levee somehow accommodates development. And
7 we're saying it doesn't. Moving the levee accommodates
8 Trinity Parkway.

9 I don't deny that there is a ramp up and over and
10 there are utility crossings. But I am not aware of the
11 Reclamation Board ever before denying a ramp up and over a
12 levee for utility crossings for any of these bases that
13 are being talked about today.

14 I mean, I'm just not aware of it. I suppose the
15 Board can start a new precedent.

16 SECRETARY DOHERTY: Some of that is changing. I'm
17 not sure.

18 MEMBER SUAREZ: Mr. President, if I may?

19 PRESIDENT CARTER: Yes.

20 MEMBER SUAREZ: Mr. Shapiro, I would wonder if you
21 could -- you have seen the staff recommendation; correct?

22 MR. SHAPIRO: Yes.

23 MEMBER SUAREZ: And the staff recommendation
24 includes an alternative B, potential Board action. And
25 actually says -- suggests four points, that should we move

1 forward with the request to the Corps, we might consider
2 adding language. I was wondering if you could take a
3 moment and look at those and give us your thoughts on
4 those.

5 MR. SHAPIRO: Sure. Well, I think the first one
6 is one that I would agree with, wholeheartedly. I think
7 that the alteration is in the best interest of the state
8 and does not have a negative impact. I think in the last
9 discussion, we used the term deleterious or injurious
10 impact. But I agree, we're talking a levee. There's no
11 hydraulic impacts, because it's dry land on both sides,
12 and we're making it better and providing redundant flood
13 protection. So I agree with that finding.

14 Secondly, the levee will -- the project to be
15 recommended to the Corps will be located further west, so
16 there won't be conflicts between county infrastructure and
17 the flood control project.

18 I may have to ask one of the engineers to come up,
19 but I don't see that there's a conflict here from the
20 proposed location. The proposed location was designed,
21 based on feedback from folks we talked to at the Corps,
22 and headquarters and district, that if you have a road and
23 you had a 20-foot wide easement, then there wouldn't be a
24 conflict between them.

25 Third is the 50-foot issue, which I think I've

1 already spoken to.

2 And the fourth is to have a separate application
3 come in for the extension of Otto Drive.

4 And I'm not sure I understand the basis of a
5 separate application, since 2126 will not be the public
6 entity responsible for the street. The 2126 will be
7 responsible for, along with the County for an O&M-ing the
8 levee. The levee includes the ramps that are going to go
9 up and over the levee. So I don't see why 2126 isn't the
10 best public entity to be responsible for it.

11 MEMBER SUAREZ: Well, I don't know. I had --
12 point No. 4. Could it be accurate to say that the issue
13 of separating the applications could be dealt with at a
14 permit process after the 408 process?

15 MR. SHAPIRO: As the applicant, I would have no
16 objection to it. I can't speak for the City of Stockton
17 as to whether it would want to be the applicant on the
18 ramp. I suspect even Jim can't, because he would need the
19 city council to say something. But we've all been
20 proceeding under the assumption that 2126 would be the
21 appropriate entity.

22 MEMBER SUAREZ: So I guess my -- let me rephrase
23 it so I can be perhaps more clear.

24 Let's say that some of the Board members feel
25 there should be a separate application. Is that an issue

1 that can be resolved later on and still move the 408
2 process?

3 MR. SHAPIRO: I don't see why it couldn't be
4 resolved later on.

5 MEMBER SUAREZ: Thank you.

6 PRESIDENT CARTER: Any other questions of the
7 applicant?

8 I somewhere missed -- you say several times that
9 this is an opportunity to move the levee at no cost to the
10 state. Who is paying for it, the project?

11 MR. SHAPIRO: The project is being paid for from
12 impact fees and other fees collected by the City of
13 Stockton. In this case, it's going to be paid for, in
14 large part, by the landowner of Atlas Tract as a condition
15 for its deal with the city.

16 PRESIDENT CARTER: So it's going to be paid for
17 development and impact fees for development of Atlas
18 Tract?

19 MR. SHAPIRO: And other areas. Basically, the
20 whole region that has impacts on the transportation system
21 contributes to solutions of the transportation systems.
22 So for example -- and Jim, you will correct me if I get
23 this wrong.

24 But if you look at the aerial that I put up on the
25 screen, you have areas to the north of Atlas Tract and

1 areas to the south of the Atlas Tract, which are being
2 developed. They are separate from Atlas Tract. And they
3 will all benefit from the roadway.

4 MR. GIOTTONNINI: Maybe a clarification. The
5 public facility fees, which is paid by new development is
6 going to pay for the roadway. And we have already
7 collected those monies from developments in the area. It
8 wouldn't include Atlas Tract because they are not even
9 approved to develop, yet, in the city. The levee is going
10 to be moved by the reclamation district and funded by the
11 reclamation district.

12 PRESIDENT CARTER: The reclamation district has
13 the financial wherewithal to do that?

14 MR. GIOTTONNINI: I can't speak for the property
15 owner.

16 MR. SHAPIRO: It does. And if, prior to a permit,
17 you need some sort of bonding or proof of that, we are
18 happy to provide it.

19 MEMBER RIE: It's pretty typical for cities and
20 counties to collect traffic impact fees. And these fees
21 are collected over years. And it sometimes takes 20 years
22 to collect enough impact fees to pay for a regional
23 improvement.

24 An improvement such as Trinity Parkway wouldn't be
25 paid for by one development or one developer or one

1 landowner. That's a regional benefit to the entire
2 city -- county. It's also an alternative route to I-5.
3 So these type of facilities are paid for by a whole
4 community, throughout time, and they take years to plan.

5 PRESIDENT CARTER: Any other questions or comments
6 of the applicant?

7 MEMBER SUAREZ: May I ask one more, please.

8 PRESIDENT CARTER: Yes.

9 MEMBER SUAREZ: Does the environmental document
10 address the impact of the project on the system of flood
11 control?

12 MR. SHAPIRO: Yes. And it concludes that it
13 doesn't have any impact on the system of flood control
14 because there is 100-year flood protection on both sides
15 of the levee. There's only a hydraulic impact if
16 improving the levee or moving the levee would result in
17 hydraulics changing. Since water doesn't hit this levee
18 except beyond a designed storm, there is no impact.

19 MEMBER BURROUGHS: I have a question. When was
20 the last time there was water that was impacted by a
21 storm?

22 MR. SHAPIRO: Chris Neudeck may know the answer to
23 that.

24 The fact that the perimeter levees were
25 constructed recently may make it not a relevant statistic,

1 because those levees may not have been there next time.

2 MR. NEUDECK: We don't have any knowledge of water
3 ever being against that because, we understand, the whole
4 purpose of that project levee being in a dryland case was,
5 if you note, both on the north and south side, that levee
6 comes down and wings north and south.

7 And it was basically the project proponent's
8 ability to root the flood down the delta pool. The delta
9 pool starts just west of I-5, and it was kind of their way
10 to spread it out. They didn't recognize -- the federal
11 government didn't recognize those nonproject levees.

12 MEMBER BURROUGHS: I didn't ask about the federal
13 government recognizing it. I just asked when was the last
14 time --

15 MR. NEUDECK: We don't have any record of that --
16 those levees ever failing.

17 MEMBER BURROUGHS: Okay. And just a comment. You
18 mentioned it's dryland, but yet there's Bear Creek on one
19 side and the Mosher Creek -- is that how you pronounce it?

20 MR. SHAPIRO: Mosher.

21 MEMBER BURROUGHS: On the other side. Is there
22 water in either one of those?

23 MR. SHAPIRO: Yes, but there are levees between
24 Mosher Creek and Bear Creek and the dry land levee.

25 MEMBER BURROUGHS: Thank you.

1 MR. SHAPIRO: I should just note, very briefly,
2 because I recognize the time, I may not have been clear
3 before.

4 The construction of the perimeter levees around
5 Atlas Tract, recently, were not the first levees. There
6 have been, as Chris was saying, nonproject levees there,
7 historically, which is why we don't have a record of water
8 up against the dryland levee. They were just improved to
9 ensure that they had 300-year protection.

10 SECRETARY DOHERTY: But are they still private
11 levees?

12 MR. SHAPIRO: Yes, they are.

13 Thank you for the chance to present.

14 VICE PRESIDENT HODGKINS: I have a question on
15 those -- the improvements of those levees. They appear to
16 tie into the project levee. Did you get -- when you did
17 the work on it, did you get an encroachment permit to do
18 some work for the tie-in?

19 MR. NEUDECK: That's a good question. Yes, they
20 do tie in. And the debate occurred with your staff with
21 regards to whether or not we needed a permit. And we
22 actually started the permit application process and noted
23 that the -- where the easement lies. And if you can
24 project that red line, north, we looked at where the
25 easement line landed and then started evaluating the levee

1 strength in that vicinity.

2 And the levee strength of your project levee
3 actually expanded beyond your easement. So when we tied
4 in, we tied into a section of levee that was outside your
5 easement but still met the standard of the hundred-year --
6 FEMA hundred-year flood plain criteria. So it ended up
7 that we did not have to encroach inside the easement. So
8 we withdrew our permit application.

9 But effectively, it's tied together. Just happens
10 to be that project levee expanded outside of its easement
11 with a stronger levee. It was evaluated. We considered
12 it. We worked with your staff and went through the
13 application, just prior to completing it.

14 MEMBER BURROUGHS: Mr. President, could legal
15 counsel give some comments on that?

16 PRESIDENT CARTER: Let's hear from staff first and
17 the staff report, and then we'll hear from all of the
18 staff.

19 CHIEF ENGINEER BRADLEY: Good afternoon. Steve
20 Bradley, Chief Engineer for the Reclamation Board.

21 (Thereupon an overhead presentation was
22 presented as follows.)

23 CHIEF ENGINEER BRADLEY: This will be a much
24 shorter presentation since I don't have to do an
25 introduction of the project, thanks to Scott.

1 I think I will touch on a couple of issues before
2 we start. You asked about the levee. They did not come
3 to us for a permit to do the levee construction that they
4 did do. They came originally and told us they were going
5 to build this levee around. And they wanted a permit to
6 tie on and they were going to tear out the federal levee.
7 We said, "You can't do that. You need -- that's a 408
8 issue. You can't do that."

9 They withdrew their permit. And the next thing we
10 knew, they had built these levees without coming to us for
11 a permit to work on a project levee.

12 At that time, it was kind of a moot point, not
13 much that we could do about it at that time.

14 Even though the levee is outside the easement,
15 they still need -- it is a federal project levee. And
16 they do need to -- a permit is required for any activity
17 on the levee, especially if you dig into that levee.
18 That's one of the really pertinent criteria for the need
19 for a permit. Yes, they did coordinate with us upfront.
20 No, they did not get a permit to do those levee
21 improvements.

22 I did have a question for Scott before we started.
23 There was some language in the WRDA bill, before Congress,
24 the Water Resources Development Act. And I don't think
25 that has passed. But I'm not sure. I thought that the

1 President vetoed that.

2 MR. SHAPIRO: There is language in WRDA that has
3 passed the Senate and the House. And WRDA has not been
4 sent to the President yet.

5 CHIEF ENGINEER BRADLEY: The reason that is
6 significant is, WRDA will tell the Corps what to do, one
7 way or the other. And I believe this language allows some
8 of this to go on.

9 So the decision right at the moment, though, is
10 with the Rec Board.

11 But I addressed the bridge. We did issue a permit
12 for the bridge. I think that's a big whoops. But part of
13 that is the problem of getting a piecemeal project. They
14 have a whole project here of a Trinity River expansion
15 that went along project levees. A couple of bridges --
16 there actually will be another bridge over the Mosher
17 Slough.

18 And so we probably didn't realize that, or you
19 looked at it and looked like there was enough room, as you
20 look down on the project, that there was enough room to
21 put in that bridge.

22 --o0o--

23 CHIEF ENGINEER BRADLEY: Right here. If you look
24 at it, it looks like, you know -- just looking at it, and
25 I was out there actually when we were doing some of the

1 Bear Creek right here. What they are talking about, it's
2 where we have those encroachments that are a problem,
3 where the Corps had problems. They are from this bridge,
4 on upstream. There's about eight houses in there.

5 So we were out there about a month or a month and
6 a half ago. And I looked down there and, you know, it
7 doesn't look like it's going to run right on top of the
8 levee there.

9 So when we were doing the application -- I don't
10 know if the staff really looked at it. I know that I
11 didn't look at that, per se. We were looking at a bridge
12 going across a project levee and making sure that was
13 okay.

14 Compartmentalization, that is something that I
15 think we should do. They mentioned it. This levee does
16 provide compartmentalization. That means, if a flood
17 control levee breaks, that it doesn't flood forever; it
18 floods up to the next little piece of levee, and you limit
19 the flooding. That's what they did not have in New
20 Orleans and the reason for the huge amount of area
21 flooding.

22 I think that that ought to be some of the plan of
23 flood control. Whether it's state or local, I don't know.
24 But we ought to look at limiting catastrophic damages when
25 you do have a failure. That's a side point. He did

1 mention compartmentalization that that levee provides.

2 That is true.

3 --o0o--

4 CHIEF ENGINEER BRADLEY: This is actually the
5 federal project, these dark lines. This is Bear Creek,
6 and the south levee of Bear Creek comes along here, and
7 then makes this 90-degree turn and goes down and ends at
8 Mosher Slough.

9 The north levee comes right along here. The north
10 side of Bear Creek, it kind of makes a whoop out here
11 to -- I think this is Disappointment Slough. I am not
12 sure if that's it or if that's up here.

13 Anyway, what it does is, it's like this. And as
14 the pool backs up, you have more problems with flooding
15 from the delta here, than you do from flows down the
16 stream, essentially. And it just sort of limits, spreads
17 that area out. Any flow coming down here can hit in the
18 delta pool. But it allows the delta pool to back up and
19 back along these levees a little bit too.

20 --o0o--

21 CHIEF ENGINEER BRADLEY: You can see here, again,
22 the federal project on top, just the two levees along Bear
23 Creek and the little 90-degree turn on the east side of
24 Atlas Tract. And then all the other levees that are
25 around here, in this area, are all private levees. These

1 are the local-owned levees. And you can see the
2 development or the levees around Atlas Tract are right
3 here, on three sides. That's not part of the federal
4 project. It's not protected by the federal project.

5 --o0o--

6 CHIEF ENGINEER BRADLEY: The applicant in this
7 case is, of course, the RD, which is 2126.

8 MEMBER RIE: Are those levees brand new? You said
9 that they just built them last year.

10 CHIEF ENGINEER BRADLEY: Well, there were existing
11 levees out there. They were 3, 4 feet lower. They didn't
12 meet FEMA criteria. And so in order to get their FEMA,
13 the LOMR, the FEMA certification for that area, they had
14 to raise those levees. And that's -- that's a local --
15 they did that under local authority. What they didn't do
16 is come to us for a permit for the tie-ins. They should
17 have; they didn't do it.

18 MEMBER RIE: But if they were existing levees,
19 weren't they already tied into our levee?

20 CHIEF ENGINEER BRADLEY: Right. But they raised
21 those and tied in more, into our levees. Does that make
22 sense?

23 MEMBER RIE: No.

24 CHIEF ENGINEER BRADLEY: They still had to do some
25 work on our levee to raise their levee. They put fill

1 against it, because the upper end is not tied in.

2 MEMBER RIE: So if you have two levees that need
3 an intersection, they are already tied in. And I mean,
4 you could theoretically raise a levee without tying in if
5 it's already tied in.

6 CHIEF ENGINEER BRADLEY: You are placing fill
7 against a project levee in the upper portion of it. They
8 need a permit to work anywhere on that -- in and on that
9 area of the levee.

10 The local maintaining agency, for this area and
11 most of the areas in Stockton, is the San Joaquin County
12 Flood Control and Water Conservation District. We deal
13 with them on a regular basis. They are the maintaining
14 agency, so we have a lot of interaction.

15 --o0o--

16 CHIEF ENGINEER BRADLEY: Okay. Before the board
17 today is consider sending a letter to the Corps requesting
18 Section 408 approval to alter the federal flood control
19 project. You will be altering it by moving that levee
20 40 feet to the west, approximately 40 feet to the west.

21 It's about 4,000-foot of levee, not quite a mile
22 along there. And you have heard this between Bear Creek
23 and Mosher Slough.

24 It's really -- they are moving it. It's really
25 not a flood control purpose in moving it. We're not doing

1 anything. It's not a flood control issue for this.

2 But I guess that's my biggest opposition for it,
3 is it's not flood control we're dealing with here. It's a
4 roadway. It's other things. It's not really not a flood
5 control issue. To my knowledge, we don't have -- have a
6 deficient levee there.

7 It essentially provides for the extension of
8 Trinity River Parkway. And I still think it does affect
9 the future development of that area, both Atlas Tract and
10 Shima Tract are proposed for that development. You are
11 going to need that transportation corridor to serve it.
12 You are also going to need a crossing from Otto Drive,
13 across the levee, into Atlas Tract, to serve that area. I
14 am going to discuss that in a little bit. But in my
15 opinion, that should be a separate permit.

16 --o0o--

17 CHIEF ENGINEER BRADLEY: More views, here, again,
18 from the top of the bridge and looking down. It looks
19 like there's a cursory thing without -- looks like there's
20 enough space to put a roadway in there. Probably is, but
21 when you start adding all the things that go with the
22 roadway, the sidewalks and street lights and all that,
23 it's wider than you would think.

24 --o0o--

25 CHIEF ENGINEER BRADLEY: Again, just some

1 pictures.

2 --o0o--

3 CHIEF ENGINEER BRADLEY: Board action -- because
4 you can alter it, so you'd need to do that. The staff
5 recommendation is not to send that letter requesting it,
6 one, that it's really -- there's not a state or federal
7 flood control reason for moving this levee. There's other
8 reasons.

9 Approval is really inconsistent with a couple of
10 executive orders. These are fairly old. We did refer to
11 them when we were dealing with the Captain's Table around
12 2001. They were part of the lawsuit that we did, we were
13 successful on.

14 Basically, the objective is not to encourage
15 development of the floodplain areas. Under the federal
16 executive order, if a federal agency has facilities out
17 there or some authority, such as issuing permits, they
18 shouldn't encourage that. And the state executive order
19 is essentially the same, that if there's a state agency
20 that has a permit or something, they should consider
21 whether this is placing things in the floodplain, or it
22 shouldn't be there.

23 Just to be clear, this Atlas Tract is part of the
24 secondary zone in the delta, which legislature has said is
25 okay for development. Very similar to River Islands.

1 Whether these areas should be developed or not is another
2 question. But the legislature placed it in a secondary
3 zone. It's not part of the primary zone, which is not
4 zoned for development.

5 --o0o--

6 CHIEF ENGINEER BRADLEY: It is located in the
7 delta. The elevations in Atlas Tract are from about zero
8 to 10 feet below sea level. So it is -- it does flood. I
9 mean, if you have a levee failure, it will flood. It's
10 not one of the high areas that are above parts of the
11 delta pool, or most of it are in the delta pool.

12 There's also the federal construction of access
13 roads parallel to and over the federal levee. You have
14 the Trinity River Parkway that runs parallel to the levee.
15 And you have Otto Drive that will run, essentially,
16 perpendicular to the roadway.

17 --o0o--

18 CHIEF ENGINEER BRADLEY: Oh, yeah. No federal
19 state or federal reasons. We have the 2006 DWR report,
20 that they do every year, where they go out and inspect the
21 levees. This was rated as satisfactory. The previous
22 nine years has been shown as compliant with federal --
23 with state and federal standards. "Compliant" is
24 essentially equivalent to satisfactory. They changed the
25 ratings in 2006. This is not one of the levees that was

1 put on the Corps' list of 28 levees that were maintenance
2 deficient.

3 And so, you know, as Chris Neudeck said, I believe
4 that it does meet current standards. Now, it's not that
5 you can't always have a better levee somewhere. The
6 question is, do you just move this levee for nonflood
7 control reasons? I think what's really the bigger
8 question is, whether you just move a levee for other
9 reasons.

10 This is a federal project levee.

11 --o0o--

12 CHIEF ENGINEER BRADLEY: In the executive order,
13 the state executive order -- and I did put that in the
14 staff report, both the state and federal executive orders.
15 I must say, the state executive order is a lot more
16 wishy-washy than is the federal. The federal one is a
17 little more clear.

18 But part of the introductions, actually -- it's
19 the whereases, not the actually order. But it says --
20 it's discusses, "Throughout the state, the magnitude of
21 annual flood-caused property losses and threats to human
22 safety is increasing, largely as the result of unwise and
23 continuing development of the state's floodplains and
24 despite substantial efforts to control floods."

25 "State agencies need to be more cognizant of long-

1 and short-term flood risks and losses associated with
2 occupancy of floodplains, and more consistent in the
3 evaluation of flood hazards and implementing their
4 programs."

5 Approval by the Reclamation Board of this request
6 appears to be in conflict with the state executive order.
7 Federal executive order is somewhat similar.

8 --o0o--

9 CHIEF ENGINEER BRADLEY: The goals of that are,
10 reduce the risk of flood loss, minimizing the impacts of
11 floods on human safety, health, and welfare, and to
12 restore and preserve the natural and beneficial values
13 served by floodplains.

14 Again, approval by the Corps -- now, this doesn't
15 apply to the Board, which is stated. It's approved by the
16 Corps -- will alter the project and support -- in essence,
17 support development are, at least transportation reasons
18 appears to be in conflict with that executive order.
19 That's for the federal government to decide that it is a
20 consideration for this Board.

21 --o0o--

22 CHIEF ENGINEER BRADLEY: Before I go into, you
23 know, options in case you do choose to approve that, I
24 really think the Otto Drive should be a separate permit.
25 This action is moving a federal levee, and that is your

1 408 request. Otto Drive is a separate permit. It would
2 be an encroachment to allow crossing that levee. It's
3 something Board can allow.

4 And so also, it -- the entity responsible for that
5 encroachment will be the city. It won't be the RD. They
6 may be responsible for maintenance, although I think that
7 will be handled by San Joaquin Flood Control Water
8 Conversation District. But the actual entity's
9 encroachment -- The one that owns that encroachment will
10 be the city. And they should be the applicant for here.
11 It really should not be part of this permit. That's a
12 separate issue, separate encroachment.

13 If somebody wanted to come along and put a pipe
14 through somewhere else, we wouldn't let the RD do that
15 unless it was a pipe for the RD. We would think that
16 whoever the applicant is would be the person who would
17 submit the application.

18 SECRETARY DOHERTY: Mr. Bradley?

19 CHIEF ENGINEER BRADLEY: Yes?

20 SECRETARY DOHERTY: What was this project levee
21 for in the first place, the one that runs kind of parallel
22 to I-5? Was it so that water could flow across Shima and
23 Atlas?

24 CHIEF ENGINEER BRADLEY: You are talking about the
25 little 90-degree turn?

1 SECRETARY DOHERTY: That red one, the very first
2 one, that --

3 CHIEF ENGINEER BRADLEY: Yeah. It's the 90-degree
4 turn off the main thing.

5 SECRETARY DOHERTY: Yeah.

6 PRESIDENT CARTER: No, no, no. She's talking
7 about the actual project levee that we're talking about
8 moving.

9 CHIEF ENGINEER BRADLEY: Right. That's the
10 90-degree turn off the federal project. You've got a
11 levee that comes along Bear Creek. And then it makes a
12 90-degree turn and then it makes a 90-degree turn and goes
13 down the east side of Atlas Tract. And that's that
14 90-degree turn, 4,000 feet of it.

15 Part of the federal design -- and why it didn't
16 wrap around, I don't know. But the project was the Bear
17 Creek project. And why it was designed that way, I don't
18 know.

19 Stockton, in my opinion, is a mess in the way of
20 flood control. There's a mixture of, you saw, nonproject
21 and project levees throughout here. It's going to be a
22 real disaster when we figure out what needs to be done
23 down there.

24 SECRETARY DOHERTY: And so they were allowed to
25 build levees, their own private levees. But yet, in other

1 parts of the state, we make people degrade their levees.

2 CHIEF ENGINEER BRADLEY: They have levees around
3 there. It was actually an agricultural tract protected by
4 a smaller levee.

5 SECRETARY DOHERTY: What, a 2-foot levee?

6 CHIEF ENGINEER BRADLEY: It was probably about 6
7 or 8 feet, if I'm not mistaken. I think they are 11 feet
8 now.

9 SECRETARY DOHERTY: 11 feet now?

10 CHIEF ENGINEER BRADLEY: Yeah, I think they are
11 like 11 feet.

12 MEMBER RIE: Does applicant want to address that?

13 CHIEF ENGINEER BRADLEY: I'm not sure that's
14 relevant at the moment. You will hear that when the
15 permit comes forward. So those are your technical details
16 on the permit.

17 PRESIDENT CARTER: Go ahead, Mr. Bradley.

18 CHIEF ENGINEER BRADLEY: Where was I?

19 Oh, like I said, the Otto Drive permit really
20 should be a separate permit. So I want to cover that
21 before I went into the Board action. I think you could
22 make the 408 request just to move the levee, if you so
23 choose, and not address the issue of Otto Drive.

24 But if the Board approves the request -- I asked
25 for this. I didn't realize the Corps required it. So you

1 do have to make a finding that it is -- it certainly does
2 not have an adverse impact on the federal flood control
3 system. So that is going to be a requirement, that you
4 make today, if you choose to send the 408.

5 Our 408 letter, the draft 408 letter that's
6 included in the package does not have that in there. The
7 one we sent to SAFCA did have it in there. And so we
8 slipped up when we drafted this one.

9 Again, this you could probably address when you
10 come to the permit, if you so choose. My -- I thought
11 that there was, as I remember and when I was looking at
12 this permit, is that there was some parallel -- parallel
13 utilities or utilities that were parallel to the levee,
14 along Trinity Parkway, that were actually within the levee
15 easement area that we would normally get. And parallel
16 utilities are not allowed by the regs. For one, they
17 make -- if you get seepage on them, then it runs along the
18 levee. So you don't want that.

19 So what I said, if that's the case, and we could
20 look at this further, on the permit, we would move that
21 levee further so there's no conflict between the flood
22 control system and the transportations. They ought to be
23 completely separate, should be no encroachments from one
24 to the other.

25 PRESIDENT CARTER: I did ask for wider levees.

1 They are saying they have 300-year flood protection. I
2 don't know if that's true or not. This, again, could be
3 addressed when you actually write the permit. My thought
4 is, I wanted to bring this forward so the Board would
5 realize, I am going to be asking for more area because, I
6 think, in the future, the state's goal, at least under
7 Prop 1E, is to go for 200-year level of protection. It
8 may be that in the future we go for four or five hundred-
9 year, which is what the rest of the country has as their
10 base case.

11 Here, we're really happy when we have a hundred,
12 and we're going to 200. But we should have much higher --
13 in order to do that, you are going to need some space to
14 be able to widen and raise those levees. Whether we need
15 50 feet or not, I don't know. I just know that when you
16 have urban developments for specifically residential
17 developments and then adjacent to the levee, you have
18 nothing but problems. It turns out to be a maintenance
19 headache for the maintaining agency to keep encroachments
20 out of there.

21 --o0o--

22 CHIEF ENGINEER BRADLEY: And again, the extension
23 of Otto Drive would be considered as separate application
24 for the reasons I stated. It will be an actual
25 encroachment. These 408 requests, we really have no

1 regulations for them, and the Corps has no regulations for
2 them. I'm not sure the permit process is really
3 appropriate when you address them by hook and crook and
4 you have seen all the problems that have come when you
5 address permit issues under 408 issues.

6 But anyway, if you choose to do that, then I --
7 you know, I would like you to at least consider these.
8 About the only one you have to really address is the first
9 one, which is make a finding that there is no adverse
10 impact to the federal flood control plan.

11 MEMBER RIE: I think it's already in the letter.
12 The letter says that the Board has determined the proposed
13 alteration will not have a detrimental effect on the San
14 Joaquin River Flood Control Project.

15 CHIEF ENGINEER BRADLEY: Okay. So it's in there.
16 Great. I missed that. I missed that when I was looking
17 at it earlier.

18 So are there any questions?

19 MEMBER SUAREZ: Mr. President, I have questions.

20 Mr. Bradley, just so I can be clear, unlike the
21 earlier permit or discussion that we had when you were
22 saying, "Don't send the 408 letter now; do it later," you
23 were saying here, "Don't send the 408 letter, period"?

24 CHIEF ENGINEER BRADLEY: Right. I am not sure you
25 should be asking -- you're dealing -- the Board is set up

1 for flood control issues and what is the flood control
2 issue for moving this levee.

3 MEMBER SUAREZ: But that's not the only
4 considerations we make; correct? We allow people to --

5 MEMBER RIE: Caltrans. We give Caltrans permits.

6 CHIEF ENGINEER BRADLEY: We do. We don't -- we
7 haven't given Caltrans -- they are not moving levees.
8 They have an encroachment. This is moving -- this is
9 changing the federal flood control project for a
10 nonfederal flood control region. That's my take on it.

11 MEMBER SUAREZ: But it's for the better.

12 CHIEF ENGINEER BRADLEY: That's for you to decide.

13 MEMBER SUAREZ: The evidence presented seems to
14 indicate that the levee certainly is not making it worse,
15 and, if anything, will make it better.

16 CHIEF ENGINEER BRADLEY: Well, potentially. We
17 would hope so. I mean, we would hope that a new levee is
18 going to be better.

19 PRESIDENT CARTER: Any other questions for Mr.
20 Bradley?

21 Rose Marie, did you have a question for legal
22 counsel?

23 MEMBER BURROUGHS: No.

24 MEMBER SUAREZ: Mr. President, I have a question
25 for legal counsel, if I may.

1 PRESIDENT CARTER: Yes.

2 MEMBER SUAREZ: Mr. Bradley mentioned that the --
3 I guess, the request appears to violate both the federal
4 and state executive order. And I would like to know
5 whether that's a legal opinion or whether that's staff's
6 impression.

7 LEGAL COUNSEL MORGAN: No. I think that's
8 correct. But the executive orders of both the federal and
9 state are not so strictly prohibited as they would be if
10 they were statutes, for instance. They are more guidance.

11 The big problem, I think that you have here, is
12 that, for instance, the Board is going to have to make a
13 determination, or delegate to the general manager to make
14 a determination, similar to the previous application, that
15 this is not injurious to the plan of flood control.

16 Part of that -- I mean, it would seem obvious,
17 because there's this big levee around there. But that
18 levee was not permitted. That levee is within the Board's
19 jurisdiction. And no permit was issued for that levee, to
20 raise that levee, to change the plan of flood control.

21 No permit was sought -- well, apparently a permit
22 was sought but then was withdrawn to attach the raised
23 levee to the federal plan of flood control. So you have a
24 couple of problems there. What I think you should
25 consider is not the levee that's there now that was built

1 without a Board permit or Board oversight and without
2 review by the Corps of Engineers, but the previous
3 agricultural levee that was there before. And so will
4 moving the project levee inland affect the plan of flood
5 control with that system in mind?

6 And also, I think it's just a little -- nothing
7 short of outrageous, to be honest with you, to have
8 someone say that just because the easement stops at a
9 particular point, that they can therefore attach to the
10 federal project levee with impunity.

11 Everyone who's dealt with this system, for any
12 length of time, knows that there are stretches of levees
13 where the easements don't line up to the levees -- and I
14 have no idea why -- and other places where we have no
15 easements whatsoever.

16 By the practice of using these things, they are
17 dedicated to a public use, through decades of use of these
18 levees, through operation and maintenance of these levees.
19 And to claim that because the easement falls a few feet
20 short of that levee on the ground, you don't have to be
21 subject to the oversight of the Reclamation Board or the
22 Corps of Engineers is preposterous. So I want to make
23 sure that the Board is clear that that's not a tenable
24 argument.

25 MEMBER SUAREZ: Isn't that a separate issue?

1 LEGAL COUNSEL MORGAN: Well, it -- I think it goes
2 a little bit to the question -- I mean, basically, as
3 Steve is suggesting, the Board ought not be moving or
4 modifying federal projects to accommodate nonproject
5 concerns, nonflood concerns. And the Board, of course,
6 can take into consideration the fact that, to be a good
7 neighbor, to be -- you are all part of the state. You are
8 all trying to accommodate things. And if someone is going
9 to spend their own money to move the money and to make it
10 better in the long run, perhaps -- and if the Corps will
11 accede to the request, it might not be unreasonable to do
12 these things.

13 I mean, it is outside of the normal focus of the
14 Board. But you can certainly make findings that it's a
15 reasonable thing to do. But that's sort of an equitable
16 decision on the part of the Board. And if I were a Board
17 member, I would have some trouble doing it with someone
18 who comes to the Board with unclean hands, as we say in
19 equity, where they have built their levee without asking
20 for a permit to begin with, attached it to the project
21 levee without getting a permit to do that. That's a
22 troublesome posture for me.

23 PRESIDENT CARTER: Any other questions of staff?

24 Mr. Brown?

25 MEMBER BROWN: The public works director from

1 Stockton, are you confident that the 40-foot setback is
2 sufficient to meet the criteria that Steve suggested,
3 should additional utilities meet parallel in that part of
4 the language?

5 MR. GIOTTONNINI: Well, possibly Scott can discuss
6 it. But the plans -- the easement relocation will not
7 have any parallel utilities. It's all going to be within
8 the parkway right-of-way. So there are no parallel
9 utilities.

10 MEMBER BROWN: Okay.

11 MR. GIOTTONNINI: They will be, if and when Atlas
12 Tract does develop there, there will be utilities that
13 will cross over the levee on Otto. But nothing parallel.

14 MEMBER BROWN: I think I said Scott, but I meant
15 Steve.

16 MR. SHAPIRO: President Carter, there are factual
17 errors in the record, which may be, in part, our fault for
18 not including this information in the application. With
19 your permission, can I correct them so the Board can make
20 a decision based on the facts?

21 PRESIDENT CARTER: Please do.

22 MR. SHAPIRO: Atlas Tract is not zero to negative
23 5 or 6 feet. It's actually right around sea level and
24 above. So this is not one of those holes in the delta.

25 The improvements to the nonproject levees raised

1 up by 2 feet, not from 3 feet to 11 feet. There's only a
2 2-foot raise. All of the utilities, parallel utilities,
3 all run under Trinity Parkway itself. They are outside
4 the 20-foot area. So it's more than 10 feet outside the
5 current 10-foot standard, or completely outside the 20
6 feet.

7 And I think it's important to clarify this issue
8 of the tie-in. And I see a couple of the Board members
9 are troubled by that. I hear Mr. Morgan's comments. I
10 don't know how I can visibly do this, so I will do my best
11 in words.

12 You have a project levee which turns into a
13 nonproject levee. Right? And the Bear Creek project
14 levee, which turns south, and where it turns south, it
15 turns into a nonproject levee. So when RD 2126 went
16 forward to say, "We're doing improvements in the
17 nonproject levee, which we do not have to go to the
18 Reclamation Board for, because there isn't jurisdiction of
19 a nonproject levee," we said, "Do we need an encroachment
20 permit?" How do you determine where the project levee
21 ends and the nonproject levee starts? It's not like you
22 can go out and you can see a magic line. And what we did
23 was, we looked at the easement.

24 VICE PRESIDENT HODGKINS: Can I ask you a
25 question? You have a nonproject levee here. You have a

1 project levee here. They are hooked together. Didn't you
2 somewhere encroach into the project levee or are they --
3 is there a minuscule barrier?

4 I have to tell you, Stockton, that the argument
5 about not needing a permit is doing nothing for me except
6 reinforcing an opinion that I am developing that
7 Stockton's primary goal is economic development. And I
8 understand how important that is to cities. But they are
9 not seriously engaged here in trying to work with the
10 State and with this Board, who has money, that they would
11 help to provide you 200-year flood protection.

12 And in fact, you don't even care enough about what
13 the Board thinks to be serious in how you dealt with this
14 particular permit. I'm sorry. You can defend it. But I
15 think you might be able to rationalize so you can sleep
16 that you didn't look into a project levee. But damn it,
17 the project levee is connected to a nonproject levee that
18 has been modified, and you are going to tell me you never
19 hooked into the project levee? You found an excuse not to
20 come in and get a permit.

21 And you know, I don't want to -- from my
22 standpoint, I think what you need to understand about
23 where I am sitting in all of this is, folks, I don't
24 disagree that you should be able to move a levee to
25 fulfill your transportation plan, as long as you are going

1 to do it in a way that we end up with a better levee or at
2 least as good a levee as we had before.

3 You know, I think it's all -- infrastructure is
4 all part of it. We don't say sewage can't go through the
5 levees and that type of stuff. So we got to work with you
6 on that.

7 But it's a lot harder when it appears that you're
8 treating us like we're a fly out there that you don't have
9 to take seriously. And that while the rest of the state
10 may be very concerned about flood risk, your opinion is,
11 your flood risk is not significant and you don't need to
12 work with anybody.

13 And while I wouldn't try to withhold this permit
14 based on this, I think it's important that you understand,
15 from my standpoint, if you continue to operate this way,
16 the time is going to come when we're just not going to --
17 you know, we're going to go to war here. I think it's
18 really important to understand from my viewpoint.

19 MR. SHAPIRO: Let me see if I can address,
20 factually, some of what you said without arguing the
21 policy, which is not my place.

22 PRESIDENT CARTER: No. Let's not do this. Okay?
23 I think we've heard enough on that. All right?

24 I would like to try and move on. There's a member
25 of the public that would like to address the Board.

1 Mr. Foley, would you like to address the Board on
2 this item.

3 MR. FOLEY: Good afternoon, Board President.
4 Thank you. I plead -- I am Tom Foley, Yuba City, of a
5 small nonprofit, Concerned Citizens for Responsible
6 Growth. Our primary concern is floodplain development.

7 If the project includes the extension of Otto
8 Drive, the project facilitates floodplain development.
9 There can't be any other -- there's misspeaking to say
10 that the project will not facilitate floodplain
11 development if it includes the Otto Drive extension.

12 Thank you.

13 PRESIDENT CARTER: Thank you.

14 Board members, do you have any other questions or
15 comments of staff or the applicant?

16 MEMBER RIE: I think it's important to address the
17 issue of not getting a permit. And I've been listening
18 very carefully, and Steve Bradley said the levee was
19 already there; it was an existing levee; it was already
20 connected to our levee.

21 So I don't understand the whole process of
22 reconnecting levees that were already there. And if they
23 were simply taking existing levees and raising them, they
24 could have stopped well short of our levee and not even
25 come close to our jurisdiction. So I'd really like the

1 applicant to address that, once and for all, to clear that
2 up.

3 PRESIDENT CARTER: Are you saying you would like
4 them to come to the -- to request a permit to resolve
5 that, clean up that mess?

6 MEMBER RIE: No. I would like an explanation.
7 Did we reconnect a brand new levee to our levee, or did we
8 not even touch our levee? I heard that the applicant
9 originally submitted an application and then they withdrew
10 the application.

11 MR. NEUDECK: Very simply -- and I apologize for
12 the harsh feelings. We tied in outside the easement area.
13 As I was indicating earlier, the levee, we evaluated the
14 levee near the easement area. It met or exceeded the
15 stability, so we were able to tie in outside the Rec Board
16 easement. We did not touch the project levee.

17 The project levee height and the surrounding area
18 was more than adequate, so we tied in well outside the
19 project levee easement area.

20 MEMBER RIE: So you originally submitted an
21 application --

22 MR. NEUDECK: Yes we did.

23 MEMBER RIE: -- to connect or tie in?

24 MR. NEUDECK: We believed we were going to be
25 inside the levee project -- project levee easement, and we

1 ended up being quite some distance from it when we made
2 our final tie-in.

3 MEMBER RIE: Do you know how far out you were?

4 MR. NEUDECK: It was at least 30, 40 feet, maybe
5 even further. That would have been the closest
6 excavation. I think the top was even further away.

7 MEMBER RIE: Okay. Thank you.

8 PRESIDENT CARTER: Mr. Brown?

9 MEMBER BROWN: Mr. Chairman, thank you.

10 I've heard from knowledgeable people on both ends
11 of this issue, that they need to get a permit from this
12 Board, and others saying that due to the type of
13 construction, that they don't need a permit.

14 I would like to hear from legal counsel, do they
15 need a permit from this Board?

16 LEGAL COUNSEL MORGAN: Again, based on what I've
17 heard here, it's apparently a little confusing. But I
18 understand -- I understood that there was a project levee,
19 which was depicted as the red line on the slide, and a
20 private levee, which was depicted as the yellow line on
21 the slide.

22 So if, in fact, they are attaching the yellow
23 private levee to the red project levee, and they did not
24 get a permit for that, then they were remiss because they
25 needed to get a permit for that.

1 There's been a --

2 MEMBER BROWN: That's a moot issue now.

3 LEGAL COUNSEL MORGAN: Beg your pardon?

4 MEMBER BROWN: That's a moot issue now; is it not?

5 LEGAL COUNSEL MORGAN: Well, no, because it's an
6 illegal encroachment.

7 MEMBER BROWN: But as far as this consideration is
8 concerned.

9 LEGAL COUNSEL MORGAN: To the extent -- that's not
10 the issue on the table today, as to whether or not to
11 issue a permit for that, but whether or not it was raised.
12 Because, you know, this applicant is asking the Board to
13 take an action that's not related to providing flood
14 protection, or it is taking an action to accommodate
15 transportation needs.

16 And that is, as the Board has discussed, and as I
17 mentioned previously, an appropriate thing for the Board
18 to use its discretion, to allow other things that go on,
19 along with the levees to go on. But you have an
20 applicant, who I am very surprised to think that the
21 private levee is not the way it's depicted on these
22 illustrations being attached to the project levee and was
23 not being permitted.

24 In addition, you have the whole question of
25 whether or not a levee was needed -- a permit was needed

1 to raise the nonproject levee, the private levee.

2 MEMBER BROWN: To move it 40 feet west, is a
3 permit required?

4 LEGAL COUNSEL MORGAN: No. The one in yellow that
5 runs around the perimeter of the islands was the private
6 levee.

7 MEMBER BROWN: That's not before us now?

8 LEGAL COUNSEL MORGAN: That's not before us now.

9 MEMBER BROWN: But it may come before the Board,
10 but not now?

11 The question begs, and I think the question is,
12 they want to move the red levee over 40 feet.

13 LEGAL COUNSEL MORGAN: Correct.

14 MEMBER BROWN: Do they need a permit to do that?

15 LEGAL COUNSEL MORGAN: They will need a permit.
16 They will also need the Board to approve a letter
17 requesting an alteration of the federal project from the
18 Corps of Engineers.

19 MEMBER BROWN: So the answer is yes?

20 LEGAL COUNSEL MORGAN: Yes.

21 MEMBER BROWN: Okay. Thank you.

22 MEMBER RIE: I think that that picture is
23 inaccurate because this picture that I have here shows
24 these levees curving. So I don't think that they
25 constructed a new yellow levee and attached it to the red

1 levee. I asked this question, and that yellow line
2 probably should be really drawn 30, 40 feet back.

3 LEGAL COUNSEL MORGAN: That's why I said it was
4 unclear from the discussion. And the applicant has not
5 explained it except in terms of easements. But that is
6 not how the federal project levee boundaries are defined.

7 We would like to have the easements that coincide
8 with the project levees. But in many cases, especially
9 for the older sections, we do not. We may have levees
10 that don't -- easements that don't match the property
11 exactly or no easements whatsoever, surprising as that may
12 be.

13 MEMBER RIE: I just think it's unfair to penalize
14 someone on their next request because there was some
15 confusion as to whether they really needed a permit or
16 not. If they were working outside of the Board's
17 jurisdiction, and they felt they didn't need a permit, why
18 didn't we address it a year or two ago?

19 LEGAL COUNSEL MORGAN: Well, they are not outside
20 the Board's jurisdiction.

21 MEMBER RIE: Why didn't we address this issue a
22 year ago when they improved those levees?

23 LEGAL COUNSEL MORGAN: Well, the question before
24 the Board today is not immediately to go and remediate any
25 problems that have occurred for projects that were built

1 without Board permission, and if the Board wants to take
2 any kind of action regarding those encroachments.

3 The question is whether the Board wants to
4 delegate this authority to the general manager to send the
5 letter to the Corps, asking for approval to modify the
6 federal project for what is fundamentally a non-Corps
7 purpose.

8 PRESIDENT CARTER: Ms. Suarez?

9 MEMBER SUAREZ: Is it your recommendation that the
10 second question whether or not -- I'm sorry. Is it your
11 recommendation that the second question that you posed
12 which is the one regarding what type of review or
13 enforcement, is that something that we should consider in
14 the future? Is that something that the Board should look
15 to in the future.

16 LEGAL COUNSEL MORGAN: I think the Board should
17 look at this. And I think it would be desirable to look
18 at the request to move the levee, in conjunction with any
19 determination of a need for permits to raise the existing
20 private levees to attach them to the project levees.

21 I mean, this is an issue where you are going to be
22 putting more -- taking agricultural land and turning it
23 into urban land in a low lying area, and maybe having
24 hydraulic impacts that no one has analyzed -- probably
25 small, very small. But I'm not an engineer; I'm not a

1 hydrologist. It's not my place to say.

2 And someone should tell you, and then you make a
3 determination based on those facts. But I think it would
4 be desirable to look at all these elements together.

5 MEMBER SUAREZ: Mr. Shapiro, would you be so
6 inclined to, perhaps, in a month come back and help us
7 clarify the separate question? And really, I agree with
8 Ms. Rie and Mr. Brown, we need to keep these two things
9 separate. But we need some clarification on what happened
10 with the tie-in.

11 MR. SHAPIRO: We would be happy to come back and
12 address any questions the Board has.

13 I've drawn an exhibit, which was actually done
14 based on input from the engineer who did the work. And I
15 will give it to your staff, so it can go into the record.
16 And it shows the distance that the work was done for the
17 project levees. And we would be happy to go out and do
18 survey documents to demonstrate, we are 30 to 40 feet
19 outside the project here.

20 But again, I am happy to come back. I am happy to
21 talk about it. I am happy to demonstrate no permit is
22 needed. And if the Board concludes a permit is needed, we
23 can deal with the permit process. It's just -- we tied --
24 we raised a nonproject levee outside of the project levee
25 boundaries.

1 PRESIDENT CARTER: Mr. Bradley?

2 CHIEF ENGINEER BRADLEY: Just a quick -- it's not
3 their determination whether they need a permit or not.
4 They didn't touch basis with us. This is not a difficult
5 thing to deal with. This is fill against a levee. It
6 could have been issued at staff level. It didn't have to
7 come to the Board unless we thought legal advised us. We
8 probably touched base with legal or the general manager
9 said it needs to go to the Board.

10 But this is placement of fill against a levee.
11 That's all. We don't care about the raise in the levee.
12 That's not the federal flood control project. That's
13 their levee. If they want to raise it, they can raise it.

14 PRESIDENT CARTER: Okay. Thank you.

15 Ladies and gentleman, the issue before us today
16 is -- is a request to send a letter to the Corps
17 requesting 408 approval to modify the federal project.

18 This issue has been clouded by the fact that we
19 have this private levee that may or may not have
20 encroached upon the project levee. I agree with legal
21 counsel that it's preposterous for an applicant to go out
22 there and improve a levee and work against a project levee
23 and not think that they don't need a permit regardless of
24 what technicality -- and a legal description. I think
25 it's beyond reason, in my opinion.

1 The conservative thing to do was to get a permit
2 to do those things. And without further facts, that
3 appears what needs to be -- what needs to happen and what
4 should have been done.

5 So given that, we are faced with a request to send
6 a letter to the Corps for 408 approval for modifying the
7 project.

8 What's the Board's pleasure?

9 MEMBER SUAREZ: Mr. President, I would like to
10 move that we send such a request, similarly with the other
11 408 request that we just approved, and perhaps send our
12 notations and the findings. Although, it sounds like
13 there's an environmental document that might help us
14 through that finding process.

15 But as I do that, I would relay to Mr. Hodgkins'
16 comments. We do agree, we are here in the spirit of
17 helping these things go along, and I believe they are
18 important. But we need to be able to deal with each other
19 openly and fairly. And it's my hope that on the other
20 issue, we could do so.

21 PRESIDENT CARTER: We have a motion on the floor.

22 Is there a second?

23 MEMBER RIE: Second.

24 PRESIDENT CARTER: We have a motion and a second.

25 Any discussion?

1 Hearing none, Mr. Punia, would you call the roll?

2 GENERAL MANAGER PUNIA: Board Member Emma Suarez?

3 MEMBER SUAREZ: Aye.

4 GENERAL MANAGER PUNIA: Board Member Butch
5 Hodgkins?

6 VICE PRESIDENT HODGKINS: Yes.

7 GENERAL MANAGER PUNIA: Board Member Teri Rie?

8 MEMBER RIE: Aye.

9 GENERAL MANAGER PUNIA: Board Member John Brown?

10 MEMBER BROWN: Aye.

11 GENERAL MANAGER PUNIA: Board Member Rose Marie?

12 MEMBER BURROUGHS: No.

13 GENERAL MANAGER PUNIA: Board Member Lady Bug?

14 SECRETARY DOHERTY: No.

15 GENERAL MANAGER PUNIA: President Ben Carter?

16 PRESIDENT CARTER: No.

17 The motion carries four to three.

18 Thank you very much.

19 We're going to move on to Item 11, Property
20 Management Renewal and Agricultural Lease No. 94-2, in
21 Yuba County.

22 Ms. Guebara, welcome back.

23 MS. GUEBARA: Hello. Olivia Guebara, Department
24 of Water Resources and your property management agent.

25 PRESIDENT CARTER: Hopefully we can keep this

1 relatively brief and move on.

2 MS. GUEBARA: Yes. Yes.

3 This is regarding Lease 94-2. And the staff
4 report has gone through the background as well as the
5 request. The request is a motion to approve the consent
6 vote to -- for the Board for a five-year lease extension.
7 This is the first of three 5-year options, and that staff
8 requests approval of the amendment to the Board to extend
9 the current annual rent beginning for five years,
10 beginning November 1st.

11 The reason for the extension of the current rent
12 has to do with the flood-incurred damages in 2006 and the
13 continued recovery of -- or agricultural recovery in this
14 120 acres.

15 PRESIDENT CARTER: Any questions for Ms. Guebara?

16 MEMBER BURROUGHS: What was the cost estimate of
17 loss in 2006?

18 MS. GUEBARA: The cost estimated loss? Mr. Sharma
19 is the lessee, and he can tell you.

20 MR. SHARMA: Thank you. My name is Raj Sharma. I
21 am the person who farms the area. In 2006, mostly all
22 120 acres which then we planted from the last flood, when
23 the levee break, it was all destroyed. So I would say
24 close to 300,000.

25 MEMBER BURROUGHS: From before? I meant, just

1 last year? Just last year.

2 MR. SHARMA: Right.

3 PRESIDENT CARTER: Any other questions of staff of
4 the applicant?

5 MEMBER BURROUGHS: Yes. In regards to leases with
6 tenants, in this particular one, you have either \$1,000
7 per year or 10 percent of the gross crop value. The
8 current rate for that type of lease, can you tell me what
9 range it's in?

10 MS. GUEBARA: The current rate? I'm sorry. I'm
11 not familiar with what the current rate for any type of
12 lease. But we have to understand that this is a strip of
13 land that is virtually unavailable to any other type of
14 lessee to use it. And it's sand based.

15 MR. FONG: Hi. I'm Jeff Fong with the Department
16 of Water Resources. I think the 10 percent -- I think --
17 I don't have the lease in front of me. I haven't looked
18 at it. But it was determined that 10 percent due to the
19 loss back in 1996 was an appropriate rate of return.

20 The issues are that there's a lot of sand out
21 there. There's a lot of issues that a farmer who's
22 farming high land protected by the levee would not have to
23 undergo. And so there are a lot of discounts, I believe,
24 taken on that property.

25 MEMBER BURROUGHS: How is the determination for

1 the annual gross crop value -- how is that arrived at?

2 MR. FONG: I don't know. That was set up at the
3 last Board meeting when --

4 MEMBER BURROUGHS: For all your tenants?

5 MR. FONG: Oh, I'm sorry. Typically, it's a fair
6 market rental.

7 MEMBER BURROUGHS: No. My question is, does the
8 applicant provide you with the amount of what their gross
9 income is, annually? And then do you just figure out what
10 that percentage is, they owe you? Or is a crop taken to a
11 warehouse and 10 percent is taken out that goes straight
12 to the state?

13 MR. FONG: We have two ways of establishing rent.
14 One would be a cash rent, and the second would be a gross
15 rent. In the past, basically due to staffing issues,
16 we've not really forced the tenants to provide us with
17 bills of lading or anything of that sort, unless, of
18 course, we feel that some of the rents that were received
19 don't seem to be appropriate. But there are lease
20 conditions that we provide that we can --

21 MS. GUEBARA: In the lease, there are provisions
22 that the state can require documentation, and this lease
23 currently has that, and that's in your packet.

24 MEMBER BURROUGHS: I was just curious.

25 My thought is that while I love the opportunity

1 for some of the farming land, I think it should be at a
2 rate that is fair to other farmers as well. And I like
3 the provision because of the possible loss of the flood
4 area of whatever is greater. But on the times that it is
5 greater, I think 10 percent is pretty low, and not even
6 close to what the fair market value would be for other
7 tenants.

8 I did ask the bankers in this area what ground
9 would go for and what leases would go for. And 25 to
10 30 percent is generally more of an average rate. And I
11 understand that there has been some loss in the past. And
12 I think, in compromising for that loss, we could go down a
13 little bit lower with it. But I think 10 percent is too
14 low.

15 MR. FONG: Well, if you may remember, at the last
16 minute when Mr. Sharma had asked for a longer term lease,
17 it was his intent to make a larger investment of the
18 property and go with walnuts. It was the intent that he
19 believes that in the future, even in a future flood event,
20 would not suffer the losses he has for the peaches and
21 prunes. But in that same proposal that Mr. Sharma
22 offered, when he was looking for a longer-term lease,
23 there was a scale of escalating rents that would pay back
24 on the back end of the lease for what he's giving up the
25 front end of the lease.

1 But now that the issue was brought up, the
2 potential for using this property for mitigation, we're
3 unable to go out for a long-term lease. So all we're
4 dealing with right now is that the front end of that lease
5 there's really no ability to recapture it within this
6 five-year period.

7 So if we were to come back five years from now,
8 Mr. Sharma were to approach the Board again and perhaps
9 seek a longer-term lease, then be able to go to his crop
10 of walnuts, presuming that this product was not needed for
11 mitigation at that time, we would have an opportunity to
12 recapture that rent that you're talking about.

13 Was that too confusing?

14 MEMBER BURROUGHS: I just don't agree. Thank you.

15 MR. FONG: That was his proposal earlier. And we
16 did have a spreadsheet that showed that the state would
17 come out whole in the long run.

18 MS. GUEBARA: And currently, I want to really
19 emphasize that we've gone out and looked at the property.
20 And number one, Mr. Sharma has -- does maintain it.
21 There's -- on areas --

22 MEMBER BURROUGHS: I wouldn't argue or take up
23 your time. I am happy to have the opportunity to have
24 time. There's just the amount.

25 MS. GUEBARA: It's a very sandy area.

1 MEMBER BURROUGHS: No. That's fine.

2 PRESIDENT CARTER: Any other questions of staff on
3 this?

4 Okay. So we are being requested to renew --
5 consider approval of the removal of the agricultural lease
6 No. 94-2 for five years and consider approval of the
7 amendment of the lease to extend the minimum rent of
8 \$1,000 per year until 2012.

9 MS. GUEBARA: Correct.

10 SECRETARY DOHERTY: You had 10 percent of the
11 gross crop value at one point. But you changed that?

12 MR. FONG: That's correct.

13 PRESIDENT CARTER: That's still part of the
14 request.

15 MS. GUEBARA: Yes.

16 PRESIDENT CARTER: So minimum rent of \$10,000 per
17 year, or 10 percent of the gross --

18 SECRETARY DOHERTY: \$1,000 per year.

19 PRESIDENT CARTER: I'm sorry. A minimum rent of
20 \$1,000 per year or 10 percent of the gross crop value
21 until the year 2012.

22 SECRETARY DOHERTY: I will make that motion.

23 PRESIDENT CARTER: Okay. We have a motion.

24 Is there a second?

25 MEMBER SUAREZ: Second.

1 PRESIDENT CARTER: We have a motion and a second.

2 Any discussion?

3 All those in favor, indicate by saying "aye."

4 (Ayes.)

5 PRESIDENT CARTER: Any opposed?

6 MEMBER BURROUGHS: Aye.

7 MS. GUEBARA: Thank you.

8 PRESIDENT CARTER: Let's take a five-minute
9 stretch right now. And then we're going to move into
10 Item 12. And SAFCA staff has assured me that they can do
11 Item 12 in ten minutes.

12 Thanks.

13 (Thereupon a break was taken in
14 proceedings.)

15 PRESIDENT CARTER: We are now moving on to
16 Item 12, status of the Natomas Levee Improvement Program
17 Draft Environmental Impact Report. SAFCA staff, are you
18 ready to go? We do have ten minutes.

19 MR. BASSETT: Thank you, President Carter. This
20 is a presentation that was intended to be a presentation
21 on the two EIRs we have out for the landside components of
22 the Natomas program; and also for the waterside component
23 or bank protection components.

24 It's my understanding that you received both of
25 these documents, probably about three or four weeks ago,

1 along with a -- I won't say executive summary, of the
2 Natomas Levee Improvement Program that is before our board
3 for approval, and we hope to be before your Board for a
4 programmatic approval on an application. That application
5 is 18159 that we actually submitted last year about the
6 same time.

7 At that time, there were basically two issues that
8 were involved with putting that application on hold. One
9 is the raising of the Natomas cross canal south levee and
10 the raising of the American River east levee, over
11 approximately 3 feet above the existing elevation for
12 about, say, 17 miles of that levee.

13 The major reason that was put on hold was because
14 of the issue with hydraulic impacts. And at that time, we
15 said, okay, if you give us the permit to go forward with
16 our Natomas cross canal south levee improvements, which
17 did not raise the levee, we would put this on hold. I'm
18 waiting for your staff to come forward with their menu, I
19 guess, of how to approach hydraulic issues. So this is
20 the next phase of the Natomas program, and this issue at
21 hand here is, we would like a 408 and 104 letter, not
22 today, but hopefully in the December time frame.

23 SECRETARY DOHERTY: You wouldn't get it.

24 MR. BASSETT: So what we want to do, I will move
25 off of my presentation, and we will bring up Joe

1 Countryman with MBK, who has done the hydraulic analysis.

2 He'll hopefully identify any issues that the Board
3 may have with the way we are approaching what we feel is
4 no need for hydraulic mitigation, because we feel we don't
5 have any impacts as this levee program moves forward.

6 So I will turn it over to Joe now, and I can be
7 back and answer any questions that you may have.

8 PRESIDENT CARTER: Thank you.

9 Not that I am watching the clock, but you have
10 seven minutes left.

11 MR. COUNTRYMAN: I am going to go for it.

12 I originally thought this would be 15, so we're
13 going to fly.

14 (Thereupon an overhead presentation was
15 presented as follows.)

16 MR. COUNTRYMAN: We're going to raise and
17 strengthen the Natomas levees.

18 --o0o--

19 MR. COUNTRYMAN: And you need to know what the
20 existing levee is. The existing levee is already higher
21 than the 200-year water surface profile, assuming no levee
22 failure is upstream. Okay? The significance of that is
23 what the water surface profile we're going to be designing
24 to. So the existing levee is already higher than the
25 200-year water surface elevation, assuming no failures

1 upstream. We know that, most likely, there will be
2 failures upstream, but, hypothetically speaking, no
3 failures upstream, 200-year water surface elevation, the
4 existing levee is already higher than that.

5 The existing levee in Natomas is over 2 feet
6 higher than the levee across the river on the west side of
7 the Sacramento River. And I will show you a slide
8 demonstrating that.

9 --o0o--

10 MR. COUNTRYMAN: Now, you are going to have to
11 have to some visual acumen. But in this particular photo,
12 the green little Xs are the Natomas levee. And the yellow
13 line is the levee on the west side of the river. And if
14 you look -- just to explain the lines here, this line here
15 is the 1957 so-called design water surface profile.
16 That's what the Sacramento River Flood Control Project was
17 designed to pass. Okay? That's the water surface
18 elevation.

19 The other line right there is 3 foot of freeboard,
20 which was the design top of levee according to the
21 Sacramento River Flood Control project. Well, one thing
22 that's quite obvious, is the levees are considerably
23 higher than this minimum. I have appeared before the
24 Board many times and said that those standards were a
25 minimum, not a maximum.

1 And all you have to do is look at Natomas and the
2 levee across from Natomas to understand what I have been
3 saying is true. It was a minimum, not a maximum. And in
4 this case, the levee exceeded the minimum, considerably
5 exceeded the minimum.

6 The blue line on there is the 200-year water
7 surface elevation, assuming no failure is upstream. And
8 you can see the green line is, at all times, is higher
9 than that.

10 Now, if we look down, I want you to notice the
11 blue line there, that's below the 3 foot of freeboard.
12 The west levee of the Sacramento River is currently below
13 project standards, and the blue line demonstrates how far
14 below project standards. In other words, it should have
15 three foot of freeboard, and it doesn't. For purposes of
16 our modeling, we assume that levee would be raised up to
17 the freeboard line, or the top to levee line, in all of
18 our modeling studies. Even though it currently is well
19 over a foot, almost a foot and a half below that standard,
20 we assume, for the purposes of our hydraulic modeling, it
21 would be raised up to that authorized, I guess we could
22 call that, top of levee profile.

23 This is all important because you are going to see
24 with these conditions that exist out there, the Natomas
25 levee is already superior in strength and in height to the

1 rest of the Sacramento River Flood Control Project.

2 --o0o--

3 MR. COUNTRYMAN: Why is it superior in strength?

4 The Corps, the state, and local agency has spent
5 \$150 million since 1986 making it stronger. It -- a lot
6 of work has been done on this levee already to the extent
7 that not too long ago, the Corps of Engineers certified it
8 as having hundred-year protection. Now they are
9 withdrawing that because of new criteria, you know,
10 relative to the foundation.

11 But my point is, a lot of work has already been
12 done on the levee. And as far as height goes, it's
13 already higher.

14 --o0o--

15 MR. COUNTRYMAN: So this is the Natomas cross
16 canal. You see the same thing. The existing top of levee
17 on the Natomas side of the cross canal is higher than the
18 200-year water surface elevation.

19 The levee on the north side, which is RD 1001, is
20 lower. And at one point it's well over a foot lower than
21 the authorized height.

22 So these red dots on this -- the next slide show
23 all the places that we found in the system that are
24 currently below authorized designed levee height. So as
25 far as our modeling, hydraulic modeling studies go, we

1 assume every place you see a red dot on here, that the
2 levees would be raised up to the authorized level, by hook
3 or crook, or somehow, because that's what's authorized.
4 Even though it doesn't exist currently, we assume that it
5 would occur at some point in time.

6 --o0o--

7 MR. COUNTRYMAN: So what our levee is, is it's
8 providing 3 feet of freeboard on top of this 200-year
9 water surface. That's why we're having to raise the levee
10 to provide the 3 foot of freeboard. The average raise is
11 about a foot and a half.

12 A key point here is the work. The work is on the
13 landside; it's not in the water. Therefore, we're not
14 changing any of the water surface flows. The flow that's
15 coming down now will come down exactly the same after our
16 project is constructed. We're not doing any work on the
17 water side of the levee. Therefore, we're not affecting
18 the designed water surface profile for the Sacramento
19 River Flood Control Project. We're not affecting flows
20 that exceed the design flow for the Sacramento River Flood
21 Control Project. So therefore, our project has no impact.

22 Now, we -- I'm going to have to just cut this -- I
23 have a lot more slides. And you can look at the handouts
24 that I gave you and feel free to call me if you have any
25 questions about them. We looked at failures assuming

1 overtopping, failures assuming encroachment in the 3-foot
2 of freeboard.

3 All of the analysis showed that the Natomas levee
4 strengthening and raising would have no impact on the
5 system. And when I say the system, we looked at the
6 system from Rio Vista all the way to the head of the
7 levees. I mean, there's no reason to do that, obviously.
8 But the model does it. And there's no impact to the flood
9 system.

10 Now, we weren't able to find an impact that way.
11 So I am going to rush here to the very last slide.

12 --o0o--

13 MR. COUNTRYMAN: We met with Steve and he
14 understood everything we were saying. But he said if
15 there was a failure, what would the impact be? In other
16 words, let's assume there was a failure, and because we
17 did improvements, then there is no failure. What would
18 the impacts be? Is that a fair -- and so we said okay,
19 and -- I am trying to hurry. I'm sorry.

20 You see the two arrows on this photograph shows
21 where we assumed failures. And what we did is, we
22 assumed, when the flow exceeded the design flow for the
23 Sacramento River Flood Control Project, it would fail.
24 That's what we agreed. We failed it on both sides at the
25 same time.

1 --o0o--

2 MR. COUNTRYMAN: And then we did the same thing
3 assuming that the Natomas side didn't fail.

4 Now, at the very bottom of this table, we talk
5 about Elk Horn. And that is the area -- sorry -- this
6 area here and this area here. It's the area on the west
7 side of the Sacramento River that would flood during a
8 levee failure. And the question was, would it flood more
9 if Natomas levee didn't fail?

10 And so we did that analysis. And that's at the
11 bottom of this table. And the flood dips were like 13 or
12 15 feet deep, and if under this assumption of assuming
13 Natomas would fail, it made either a third of a foot or
14 1.3-foot difference out of 13 feet.

15 So I mean, our view is, under this worst-case
16 scenario of assumed failures, it's really not a
17 significant difference in flooding on the other side. But
18 we don't believe that that scenario could ever happen
19 because the Natomas levee is far superior both in strength
20 and in height to the other levee.

21 So I rushed through it. That's it.

22 Any questions?

23 SECRETARY DOHERTY: Yeah. Well, you said that the
24 Natomas levee -- but Natomas is on the east side and the
25 Elk Horn is on the west side.

1 MR. COUNTRYMAN: That's right. We assumed the
2 failures both occurred at the same time under this
3 scenario.

4 The two yellow arrows at the top show where we
5 assumed the failures would occur, both into Natomas and
6 both into the Elk Horn, at the same time. Then the -- we
7 said, okay, then we'll say, with the project, it will not
8 fail in Natomas. What would be the difference to Elk
9 Horn?

10 SECRETARY DOHERTY: I see.

11 MR. COUNTRYMAN: The concern would be, you may not
12 be affecting the flows within the system, but,
13 potentially, the floodplains, once they flood, they could
14 have an impact. So we analyzed that. We don't believe
15 from an actual impact analysis, that's the right
16 assumption. But we did it to answer the question.

17 PRESIDENT CARTER: Thank you. We appreciate your
18 efforts to be brief.

19 MR. COUNTRYMAN: I'm sure you would have been just
20 thrilled with my full presentation.

21 PRESIDENT CARTER: We also appreciate you bringing
22 this before the Board well ahead of time so that we had a
23 chance to digest it and internalize it before we really do
24 have to consider it for decision.

25 MR. COUNTRYMAN: I'm asking you, if you look

1 through these charts and you have any questions, I would
2 be glad to try to answer.

3 PRESIDENT CARTER: Thank you.

4 MR. BASSETT: As we indicated, President Carter,
5 we will be meeting with General Manager Punia next week to
6 try and set up a process to get us to a decision in
7 December. If we have to come back in November to answer
8 any other questions from the staff, or from the Board, if
9 the Board has anything they would like answered, we would
10 be here also and would like to have a 408 approval or 104
11 at the December time frame.

12 PRESIDENT CARTER: Thank you. Okay.

13 Ladies and gentlemen, we will move on.

14 Item 13, Board Member Comments and Task Leader
15 Reports.

16 Any comments? Reports?

17 MEMBER SUAREZ: Mr. President, briefly.

18 PRESIDENT CARTER: Yes?

19 MEMBER SUAREZ: One of the things we were going to
20 talk about this afternoon was the legislation that
21 Governor Schwarzenegger signed, which propels us into a
22 new era of flood control. That's a very important
23 presentation. I know Scott Morgan had worked on it. But
24 in the interest of time, may I suggest that we should
25 really make an agenda item, and maybe I can bring that up

1 during agenda items, but kind of table that discussion for
2 now, so we can move -- it would do it a disservice just to
3 rush through it.

4 PRESIDENT CARTER: Okay. My understanding is that
5 Mr. Morgan is not going to be with us in November, so
6 we'll have to have someone else do that presentation.

7 MEMBER BURROUGHS: How much time was Scott
8 planning on presenting? Because if there's time, it's
9 only 5:30. We have time to have it.

10 PRESIDENT CARTER: We don't have a lot of time.

11 LEGAL COUNSEL MORGAN: I plan to spend four or
12 five minutes. I didn't plan to spend more than that
13 anyway, and in the interest of time, I will cut it down to
14 three.

15 PRESIDENT CARTER: Let's go ahead with that, then.

16 This is a very, very important issue. If nothing
17 else, we'll scratch the surface and introduce it now. The
18 Board members can think about it. In the meantime, there
19 is lots of work for us to do in the next three months. So
20 it's important to open the --

21 LEGAL COUNSEL MORGAN: There's literally ten weeks
22 left in the year, and the governor last week, the middle
23 of last week signed SB5, AB162, SB17, AB156, and AB70 and
24 AB5. AB5, the last one, is trying to clean up some of the
25 problems in some of the previous bills.

1 The key provisions for the Reclamation Board,
2 there will be a lot of things related to the Reclamation
3 Board. I can provide you with all the copies of the
4 chapter -- bills if you would like. And I even compiled
5 something that just shows what the laws are going to look
6 like when it's all done.

7 But of immediate concerns, there are some
8 long-term that I don't want to worry about right now.
9 Because the immediate concerns are three: The law removes
10 the Board from the Department of Water Resources.
11 Administratively, the Board has been housed within DWR,
12 which is why you have, on paper, a very small staff but a
13 large, sort of, phantom staff of DWR people who are
14 assigned to do Board work. So there's a couple of
15 implications. The Board is going to be independent. And,
16 you know, we'll see exactly what that turns out to mean.

17 The legislature has stated and the law now states
18 that the legislature intends, and I will just quote, "that
19 the duties and corresponding funding allocated to the
20 Reclamation Board as it exists on December 31st, 2007,
21 together with all necessary positions, should be
22 transferred to the new Board." Exactly what that means is
23 going to have to be worked out cooperatively, and I
24 expect, primarily, by the Department and the Board. I
25 think probably the best way to approach this is because

1 the Department has staff that understands things like
2 hiring and firing issues, staffing issues, contracts,
3 personnel, all of which the Board doesn't have any staff
4 to deal with. The Department should take the lead on
5 figuring out what all is going to have to be transferred
6 and allocated to the Board. And then get the buy-off on
7 the Board.

8 I think probably, you know, the Department needs
9 to start considering this immediately, and then holding
10 regular meetings with the executive members of the Board.
11 And then with that, the whole Board will be briefed on
12 what ultimately is going to be proposed, and, obviously,
13 sooner rather than later.

14 The third rather than urgent matter is that the
15 new model envisions the Board to be something like the
16 Water Board. The Board is going to have to adopt
17 regulations and hold a evidentiary hearing for everything
18 that requires a permit. I am willing to bet money that
19 when they wrote that, they didn't know that the Board gets
20 200 permits a year.

21 So I am not going to try to interpret how a lot of
22 these laws are going to work in practice, because one of
23 the main implications, I think, of this is, because the
24 Board is no longer administratively housed within DWR,
25 your Board counsel is probably going to have to come from

1 somewhere else.

2 DWR's provided counsel to the Board because you
3 are within DWR. Once you are outside of DWR, we're not
4 certain whether that relationship is going to be
5 appropriate for either DWR or the Board. So you are very
6 likely going to have other counsel. I want to give them a
7 tabula rasa and let them interpret these laws, based on
8 actual things coming up, rather than hypotheticals. So I
9 just wanted to alert you to those.

10 I will be glad -- e-mail me, let me know what you
11 would like. I'd be happy to provide you with any of these
12 documents -- the bills themselves, the composites of the
13 bills, anything you want.

14 PRESIDENT CARTER: Okay. Any questions for
15 Mr. Morgan? Anything any of the Board members wish to
16 add?

17 MEMBER BURROUGHS: Well, I guess just one
18 question. As we proceed with the transition and split, is
19 there any language for any provisions until things are in
20 order? We'll we operate with the support staff?

21 LEGAL COUNSEL MORGAN: The existing conditions
22 prevail until January 1st. And then as you toast the new
23 year, everything will change.

24 But up until then, the law, as it is today, will
25 stand, and so the same staff, Board counsel. In light of

1 this, there have been some plans for me to transition out
2 of the Board, for the Board to get a new counsel. And in
3 light of this, that's not going to happen. I will stay
4 with the Board until the end of the year and try to
5 facilitate the transition.

6 MEMBER BURROUGHS: Thank you.

7 PRESIDENT CARTER: Okay.

8 Thank you.

9 MEMBER BROWN: Mr. Chairman? First of all, I
10 would like to thank you for your counsel today. You were
11 very helpful. Thank you very much.

12 LEGAL COUNSEL MORGAN: Thank you.

13 MEMBER BROWN: I visualize those permits as the
14 majority of them or big part of them being put on the
15 consent calendar, unless there's an objection by a party.
16 I think we can do that, can we not?

17 LEGAL COUNSEL MORGAN: I am going to leave the
18 interpretation of how the law applies, in the future, to
19 the future Board counsel.

20 MEMBER BROWN: Okay.

21 PRESIDENT CARTER: Thank you.

22 MEMBER RIE: Is Nancy still with us?

23 LEGAL COUNSEL MORGAN: Nancy is. And she will be
24 with us, with the Board, until the end of the year as
25 well. But she's also DWR. And so when this change

1 occurs, her status will probably be to stay with DWR as
2 well.

3 PRESIDENT CARTER: Very good. Thank you very
4 much.

5 The only comment that I make in letting the rest
6 of the Board know that I am -- have initiated discussions
7 with DWR executive as well as resources executive, to try
8 and begin the discussion of how this transition is going
9 to take place.

10 So we are -- as I said, we have a tremendous
11 amount of work to do between now and the end of the year,
12 and we are ready to launch that process at this point.

13 MEMBER BURROUGHS: One small comment about DWR and
14 relationships with other agencies. In regards to like
15 Pete Rabbon, who's a DWR employee on loan to the Corps,
16 who pays his salary?

17 LEGAL COUNSEL MORGAN: I believe the Corps pays
18 his salary. But I'm not a personnel lawyer. But that's
19 my understanding.

20 MEMBER BURROUGHS: Okay. Thank you.

21 PRESIDENT CARTER: My understanding, and I am not
22 a personnel lawyer either, but based on discussions, he
23 gets a DWR check; the Corps reimburses DWR. Mechanically,
24 that's how it works.

25 Okay. Any other task leader reports?

1 I think we're going to cover the roundtable as
2 part of the GM report?

3 GENERAL MANAGER PUNIA: I will be really brief, a
4 few items. I will just touch and then if any Board member
5 needs more detail, they can contact me.

6 As you may recall, we sent a letter to the Army
7 Corps of Engineers on September 12, requesting them to
8 form a task force with us so that we can streamline the
9 408 process. In that letter, we asked two things: One,
10 to establish a task force; and second, request was to
11 delegate authority to modify a simple -- that a simple
12 alteration can be delegated to the division -- district or
13 division level.

14 The Corps responded recently. They agreed upon
15 our request to establish a task force, but they are silent
16 on the second request to delegate authority to the
17 division and the district.

18 So my plan is, I will be talking to the Rec Board
19 subcommittee on this subject and then follow up with the
20 Department of Water Resources so that we can quickly open
21 up the discussions with Army Corps of Engineers on the
22 subject.

23 California Levee Roundtable, the first meeting was
24 on August 30th. Then the second meeting was on
25 October 12th. As you may recall, the result of the first

1 meeting was that the Corps agreed to allow people to
2 continue with their vegetation until that policy is
3 revised. And our communique was released to the media and
4 to the Central Valley Flood Control Association. And in
5 the second meeting, the main decision is, originally we
6 were thinking we would come up with a plan to address the
7 vegetation component only. But the Corps is thinking that
8 you cannot address vegetation alone, that you have to
9 address other issues along with the vegetation, and so the
10 scope of the plan has expanded, and Department of Water
11 Resources is taking the lead to develop a basic plan that
12 how we are going to address the O&M-type issues on the
13 levees. And that plan will be developed and discussed at
14 the following meeting. And that will be -- as soon as we
15 have the plan, we will share with the Board. And
16 there's -- internal stakeholders and external stakeholders
17 interaction is built into that plan when we develop it.

18 And I wanted to express appreciation for the Board
19 Member Rose Marie and President Ben Carter taking the lead
20 on this subject.

21 I think Ben or Board Member Rose Marie may have
22 additional information and anything to share at this time
23 to the Board.

24 MEMBER BURROUGHS: In regards to the time, I have
25 nothing further to comment.

1 Thank you, Jay. And I would just like to express
2 my deepest gratitude to staff for a wonderful support
3 services with luncheon and meeting room and all.

4 Thank you.

5 GENERAL MANAGER PUNIA: And Department of Water
6 Resources has initiated internal workshops in which they
7 have invited the DWR management, and they have invited Rec
8 Board staff, the general manager to meet and participate.

9 So basic premise of the workshop is for
10 implementing the Prop 1E and 84 FloodSAFE Program. What
11 are the obstacles in our state system, and how we can
12 address those so that we can efficiently and effectively
13 start implementing these propositions.

14 So Keith is involved. All the deputy directors,
15 division chief, and office chief from the Department are
16 working on this. And that our plan will be developed, I
17 think, by next couple of months, which will be shared with
18 the Board and the rest of the stakeholders pretty soon.

19 Last Board meeting, I reported that we have
20 received concern from the Family Water Alliance. The
21 issue was that we impose the condition that the older
22 pipes need to be certified when we issue a permit to any
23 modification to an older, 50- or 60-year-old pipe, that
24 that pipe has to be certified by an engineer that it is
25 structurally safe. The express --

1 PRESIDENT CARTER: Excuse me. Just to clarify,
2 these are levee -- through-levee pipes?

3 GENERAL MANAGER PUNIA: That's correct. And then
4 we have provided them our written logic, for what's the
5 basis of our requiring this certification. I think they
6 understand our position.

7 And our policy is, whenever a permit will be
8 coming to the Board for any change in the older pipe, we
9 will be asking the applicant to provide us a
10 certification. And eventually, we will work with the
11 Department of Water Resources to implement a systemwide
12 program, where we will ask older pipes to be inspected and
13 then certified by certified engineers that they are
14 structurally safe.

15 Additional position for the Rec Board, we have --
16 in our previous budget change proposal, we got an
17 additional staff service analyst. We adverted the
18 position. We got a good candidate pool. We will be
19 scheduling the interviews pretty soon.

20 As you may recall, the City of Folsom and City of
21 Roseville and San Juan Water District requested the Board
22 to modify the project cooperation agreement to include
23 water supply project in the Folsom Joint Federal Project,
24 Folsom Dam project. And based upon our counsel's advice
25 that we don't have authority to participate in the water

1 supply project, plus it will delay the water -- our flood
2 control project. We have responded back to the City of
3 Folsom, Roseville, and San Juan Water District that at
4 this time we cannot entertain the request to post --
5 modify our project cooperation agreement to include the
6 water supply project.

7 Department of Finance have asked various questions
8 on our next fiscal year budget change proposal. Eric and
9 I have responded back and we hope that that request will
10 be approved.

11 And I think we briefed you a little bit about Ms.
12 Hofman's fence, that she installed a fence without a
13 permit. That was very a sensitive issue, because the
14 relationship between reclamation district, RD, 784 and
15 Ms. Hofman is not great.

16 So we requested the request of Board Member Lady
17 Bug. And I want to appreciate that with her involvement,
18 Ms. Hofman is planning to apply for a Rec Board permit for
19 the fences she installed.

20 Dan, do you want to add anything else?

21 SUPERVISING ENGINEER FUA: No. That's the bottom
22 line.

23 SECRETARY DOHERTY: Dan is very nice to her.

24 SUPERVISING ENGINEER FUA: I was --

25 SECRETARY DOHERTY: So is Steve, and that's why

1 she smiled and said "okay."

2 SUPERVISING ENGINEER FUA: It was Lady Bug's
3 charisma.

4 GENERAL MANAGER PUNIA: It diffused a lot of
5 tension and a lot of time, I think, with the involvement
6 of a Board Member and Dan, and so I think we are moving in
7 the right direction with the project.

8 River Partners has requested that we should bring
9 the project back to the Board. And Dan is working on
10 that, and we are hoping to bring it back next Board
11 meeting.

12 And then you want to quickly update the Board on
13 the Union Pacific Railroad Bridge issue in a minute or
14 two?

15 SUPERVISING ENGINEER FUA: Okay. For the benefit
16 of the Board Members Emma Suarez and John Brown, and also
17 to refresh the memory of the Board members, the Union
18 Pacific Railroad project is a bridge replacement project
19 across the Bear River in Placer County, east of Highway
20 65.

21 In early August, we, the general manager and the
22 chief of engineers, issued a stop work order for the work
23 because they didn't have a permit. So essentially, what
24 they are doing is, in the floodways putting a fill, which
25 was about 256 feet along -- across the floodway. So

1 since -- they agreed to apply for a permit to the
2 Reclamation Board.

3 And at the same time, they revised the project to
4 shorten the levee, or the fill, from 256 feet to 94 feet.
5 However, when we met on October 1st, and we haven't issued
6 a permit yet, the lawyer of the Union Pacific Railroad
7 told us that they are going to restart the project whether
8 or not they have a permit from the Reclamation Board.
9 They told us, the legal counsel of Union Pacific Railroad
10 told us that the federal transportation Board law preempts
11 state and federal law. So therefore, they can go along
12 with the project without permits from the state and the
13 Corps, essentially.

14 Well, the Corps stepped in, and the Corps said,
15 "No you cannot preempt the Clean Water Act, and even the
16 Corps laws if there is a safety and public issue." And
17 the Corps said, "There is one, so therefore you cannot
18 preempt us."

19 And they also added that they cannot preempt state
20 laws either. And I think Nancy also was leaning toward
21 that opinion, that they cannot preempt state laws because
22 there's a public issue here, a safety issue.

23 So to summarize, I don't believe they have -- I
24 don't believe they have restarted the project. And the
25 only work that they have done so far is to implement the

1 soil erosion control measures that Department of Fish and
2 Game required them to do, to prevent the fill material
3 that's over in the floodplain from washing into the river
4 and damaging the restoration project downstream.

5 And our Department is not issuing a permanent --
6 we're not acting on the permit until Corps will make the
7 determination that the project is okay. The last we heard
8 is the Corps said, "This is a 408 project, and therefore
9 needs 408 approval."

10 PRESIDENT CARTER: Okay.

11 GENERAL MANAGER PUNIA: I think that concludes the
12 general manager's report unless there's a question.

13 PRESIDENT CARTER: Any questions of General
14 Manager Punia?

15 MR. REINHARDT: If I could just briefly speak on
16 that last point. Ric Reinhardt, Reclamation District
17 Engineer for RD 2103.

18 We recently sent a joint letter to President
19 Carter and Colonel Chapman opposing the Union Pacific
20 Railroad's fill. That letter was signed by RD 2103, RD
21 1001, and the City of Wheatland. Yuba County and Sutter
22 County are also very concerned about this. And I believe
23 Placer County as well.

24 The fill's already out in the floodplain. The
25 flood season is coming up very quickly. We would

1 encourage the Board to require them to remove that fill
2 until this issue is resolved and they can move forward.

3 Thank you.

4 PRESIDENT CARTER: Thank you.

5 MEMBER RIE: Is -- are we saying that they need a
6 408 permit to put the fill if there?

7 GENERAL MANAGER PUNIA: That's not our conclusion.
8 The Corps is saying that direction. I think --

9 SUPERVISING ENGINEER FUA: That's correct. It was
10 the Corps who said, it is probably a 408 project.

11 VICE PRESIDENT HODGKINS: Have we or has anybody
12 modeled to see what difference we think the fill that's
13 there would make?

14 SUPERVISING ENGINEER FUA: Yes. I must mention
15 that they did a hydraulic analysis. And, in fact, they
16 had -- Steve asked them to revise it and then Steve
17 reviewed the hydraulic analysis. And Steve can tell you
18 what his review findings were.

19 CHIEF ENGINEER BRADLEY: They did do a hydraulic
20 analysis. I took a quick look at it. And one note about
21 it, Ric Reinhardt had his staff look at it. And they used
22 a different downstream water surface elevation starting
23 elevation. I think they used the design water surface,
24 which was more appropriate. Looks like there's some
25 very -- they appear to be fairly minor impacts. They were

1 up on that fill about two-tenths of a foot. It's been a
2 while since I have looked at that.

3 The floodway is fairly wide there. Design flow is
4 fairly low for the width of the floodway. The fill may or
5 may not be a problem with the design flow. I think the
6 real issue for 2103 is that they are raising that levee
7 over there, trying to get 200-year protection. And a
8 200-year flow, there are impacts. But that's not what the
9 federal flood project designed for.

10 So anyway, I think this is going to get a whole
11 lot more scrutiny before they do get a permit if they do
12 get a permit. They may choose to not do any fill at all
13 and just replace the bridge structure, as it's located
14 now, with -- instead of -- they remove the wooden pilings
15 and replace them with a concrete metal bin structure.

16 VICE PRESIDENT HODGKINS: They have the ability to
17 do that very quickly. But my question was more along the
18 lines of, are you -- do you think they ought to delay a
19 public safety hazard by leaving the fill in there this
20 winter? Should we try to get them to take it out?

21 CHIEF ENGINEER BRADLEY: Probably. We haven't
22 dealt with that question yet, but flood season is fast
23 approaching. I've been tied up with the Board reports and
24 a lot of meetings lately. But we probably need to deal
25 with this. They also have some of the bridge structures

1 still in the floodway. Those probably need to be removed.
2 They probably need to be removed, at least some of that
3 fill if not all of it.

4 This is a La Niña year. Anybody see the paper
5 recently? This is the type of year that you can get some
6 pretty heavy flows. You have a dry year, and all of a
7 sudden you have huge flows.

8 PRESIDENT CARTER: Just so the rest of the Board
9 Members know, I received a call from Supervisor Schrader,
10 regarding this and I followed up with the Rec Board staff,
11 a week ago, I imagine, and also followed up with Jim
12 Sandner from the Corps.

13 At that time, the Rec Board staff did not seem
14 extremely concerned about what was going on out there.
15 That was, to a certain extent, echoed by the Corps,
16 although they were still reviewing it. So I think it's
17 worthy of following up. We need to find out if there is a
18 public safety risk there. And if there is, then clearly,
19 we will be taking action.

20 VICE PRESIDENT HODGKINS: I would certainly be
21 guided by Scott and staff, but, you know, I'm not sure
22 that the only issue is whether -- how they are affecting
23 the design water surface, because if they have a more
24 significant impact and some higher flow, I mean, they
25 have -- they have still created higher water surfaces that

1 potentially cause somebody to flood.

2 I mean, at the very least, if we could put them on
3 notice that that's what our analysis shows, then it helps
4 a little bit and encourages them to get it out there.

5 CHIEF ENGINEER BRADLEY: I think that's the reason
6 the Corps slammed them with the 408. That caught
7 everybody off guard, I must say, in the conference call we
8 were in and said, "Oh, this looks like a 408." Because
9 normally, a fill like that, the Board probably would have
10 permitted it in the past, not necessarily this one, but a
11 small fill on the waterside of the levee. Probably
12 wouldn't permit certain things like that. And all of a
13 sudden, now they're telling us that that's 408.

14 So maybe, maybe not. We did receive from the
15 Corps, there are no 404 impacts. That was one of the big
16 questions. We haven't received that letter. I did get a
17 call from Karen Hess. I guess it was this week, they said
18 they will be sending a letter that says there are no 404
19 impacts. That was one of the big questions, because
20 that's the really -- the really big hammer if you want to
21 stop somebody, if there are 404 impacts. But there are
22 not with what they have done so far. That's my
23 understanding. She said that's what the letters said.

24 PRESIDENT CARTER: Ladies and gentlemen, the
25 lights go out in less than five minutes.

1 So can we move on?

2 Future agenda. We have a draft agenda here.

3 I think perhaps one thing we want to consider
4 potentially adding on here is a clarification of the Atlas
5 Tract situation, including potential or at least a review
6 by the staff of whether or not there's any enforcement
7 action required as a result of that, the actions that were
8 taken by the reclamation district on their private levee.

9 What I would suggest -- are there other items that
10 the Board members would like to include? If not right
11 now, they could give them to Jay and he and I will work
12 together to formulate the agenda for November. Do you
13 have something?

14 SECRETARY DOHERTY: It's not to add to that, but
15 we agreed as a Board and as a staff not to take on
16 something that we didn't have a background information on
17 today. And that Atlas Tract stuff came to us today. So I
18 think that we should have said, "Wait," or something. But
19 anyway, that's what we agreed upon.

20 MEMBER RIE: Yes, we did. And I requested, I
21 believe, Monday or Tuesday to get copies of both the Three
22 Rivers application and the Atlas Tract application. And I
23 did not receive that information. I made that specific
24 request. And I said, "E-mail it to me," and it didn't
25 come.

1 PRESIDENT CARTER: So either that was an oversight
2 or staff didn't have it. You -- the Board members always
3 have the option, if they choose to, to -- they can table
4 or they can deny, as part of their action, if they don't
5 have enough information, or feel they haven't had enough
6 time to thoughtfully consider a particular issue, they
7 need to exercise their own -- each individual Board member
8 needs to exercise their own judgment in terms of what
9 action they take and what they decide to do.

10 GENERAL MANAGER PUNIA: Steve, I don't recall that
11 question. But I think Teri has requested Lorraine about
12 the applications.

13 MS. PENDLEBURY: She made the request, and I asked
14 Sam Brandon about it, and he said he would handle it. And
15 I think he said that the applications might have been in
16 your office or in Steve's office. But he was going to
17 take care of it.

18 So I forwarded your e-mail to Sam for him to take
19 care of. And I'm very sorry. I don't know what happened
20 to it. I thought it was being taken care of.

21 PRESIDENT CARTER: And again, if it's taken care
22 of or not, the ultimate responsibility lies with each
23 individual Board member what action they take. They
24 decide here and now. So that's each Board member's
25 decision.

1 So are there any other items that the Board
2 members would like to see on the agenda or any specific
3 direction you would like to give myself or Jay in terms of
4 a November meeting?

5 MEMBER RIE: I don't have a specific request. But
6 I think we might want to consider adding another meeting
7 between November and December, if things are looking
8 pretty ominous as far as the hearings and our inability to
9 issue permits, we want to consider adding another meeting.

10 VICE PRESIDENT HODGKINS: And I would -- I'm not
11 sure how to do this, because, you know, normally we ask
12 Scott to do this here in saying that it's not -- he's not
13 going to be here, which is, I guess, the most important
14 thing.

15 But with the legislation, I feel strongly that we
16 need to get going on drafting regulations that are going
17 to be necessary to minimize the amount of time that we're
18 in a black hole because we're trying to get our
19 regulations done.

20 And so I am trying to figure out how you get
21 something on the agenda. So for instance, the Board could
22 vote to ask DWR, the attorney general, to tell us who our
23 attorney is and help us get that person appointed early on
24 here, so that we can really go to work on what we're going
25 to do here. But I don't exactly now how to get that on

1 the agenda.

2 PRESIDENT CARTER: We can put that on the agenda,
3 if the timing is right. I think, I will be involved in
4 discussions, and I am going to be relying on all of you to
5 help with certain portions of those discussions. Because
6 of the open meetings laws, we can't have committees more
7 than -- and given the short time frame, we would have to
8 work in committees of two Board members. And so I am
9 going to be working with folks to try and figure out how
10 we organize and divide and conquer on this challenge. And
11 so I will be contacting each and every one of you for
12 help, particularly in the next ten weeks. So expect a
13 call.

14 VICE PRESIDENT HODGKINS: So the rest of the Board
15 members know, I think we can try to meet with some of the
16 legislative staff and perhaps some legislation to let them
17 know that we want to get going on, moving forward, with
18 this and try to get a better understanding of why we felt
19 this was necessary, and just see what kind of advice it is
20 and what their expectations are.

21 PRESIDENT CARTER: Very good. Thank you.

22 Anything else? We're one minute over.

23 We are adjourned.

24 (The Reclamation Board meeting adjourned at

25 6:02 p.m.)

1 CERTIFICATE OF REPORTER

2
3 I, KATHRYN S. SWANK, a Certified Shorthand Reporter
4 of the State of California, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing Reclamation Board Meeting was reported in
7 shorthand by me, Kathryn S. Swank, a Certified Shorthand
8 Reporter of the State of California, and thereafter
9 transcribed into typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said meeting nor in any
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand this
14 31st day of October, 2007.

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23 KATHRYN S. SWANK, CSR
24 Certified Shorthand Reporter
25 License No. 13061

